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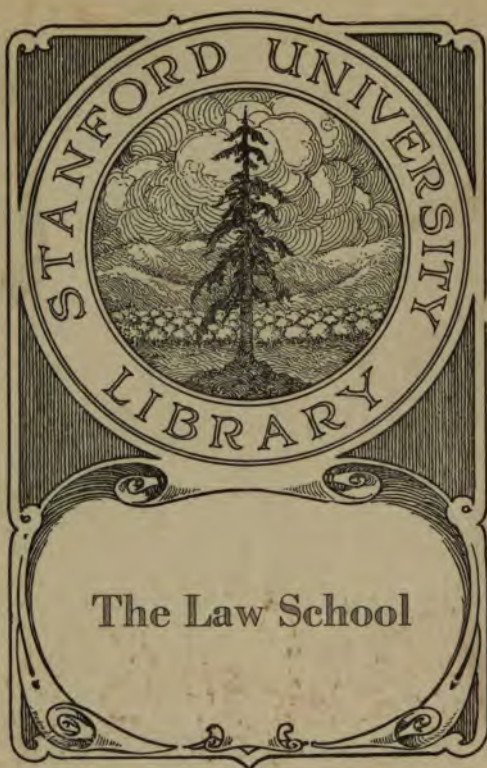
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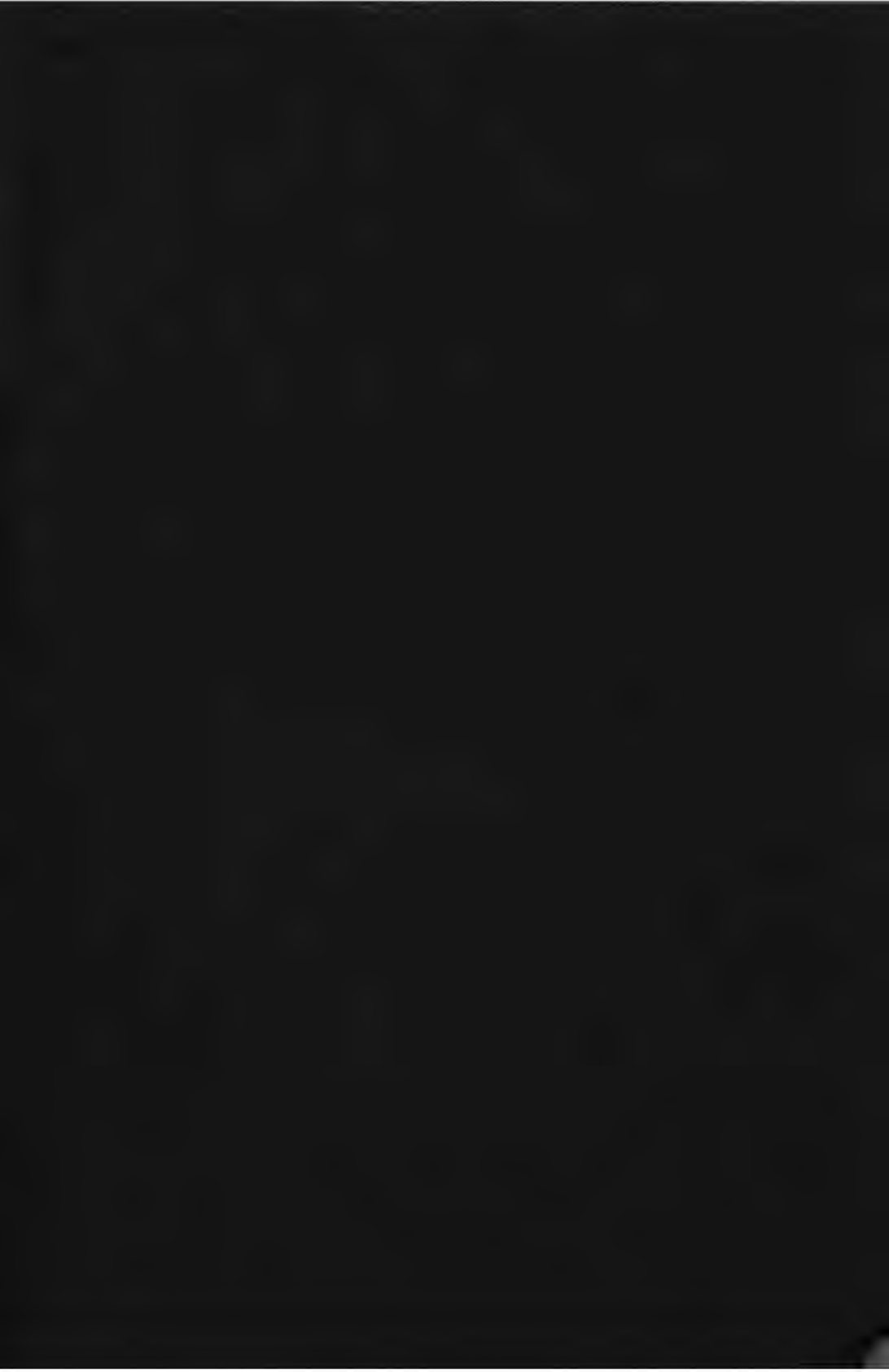
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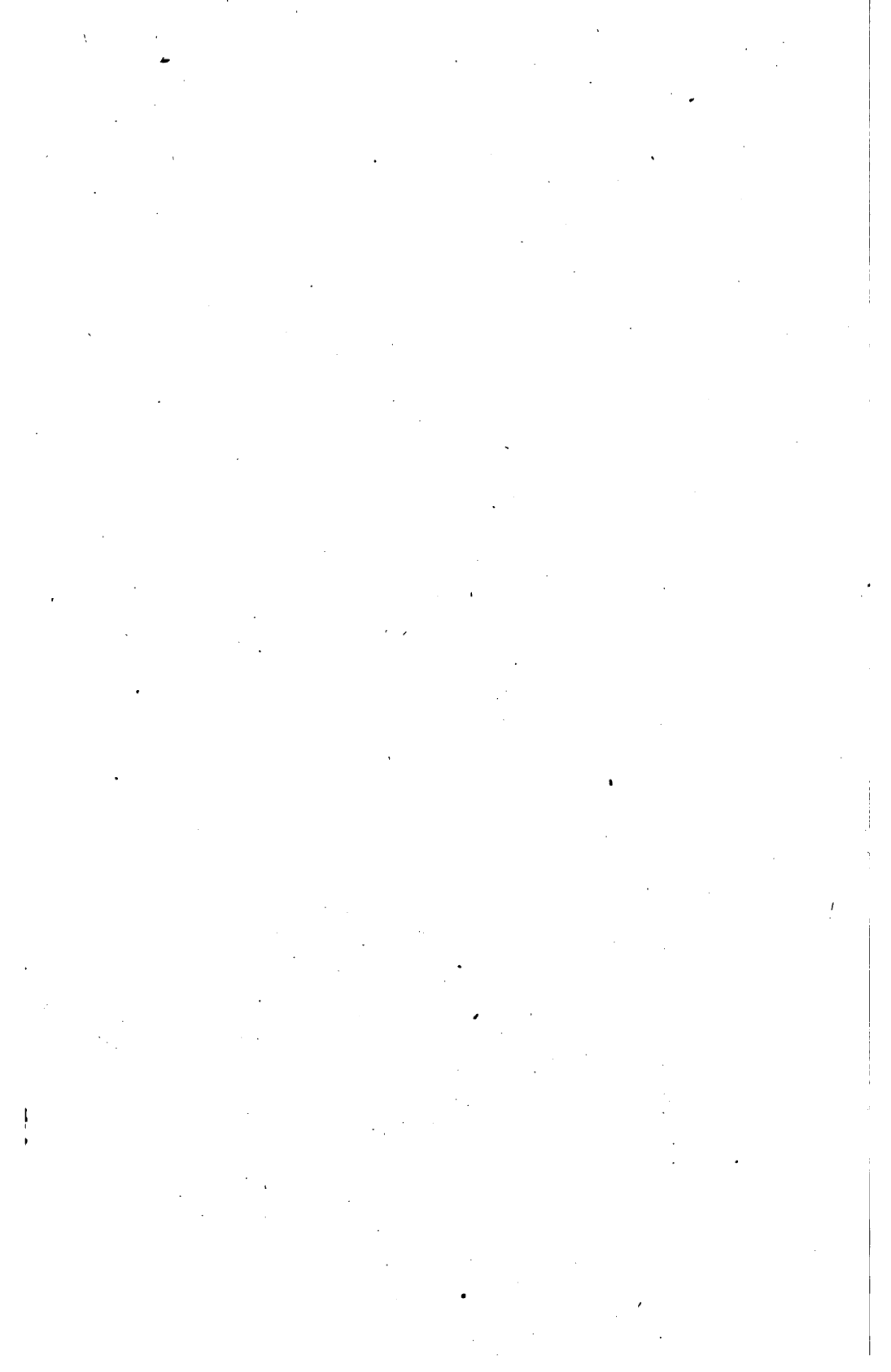
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The Law School





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THE
PLEADER'S GUIDE,
A DIDACTIC POEM,

CONTAINING THE CONDUCT OF A SUIT AT LAW, WITH THE ARGUMENTS
OF COUNSELLOR BOTHER'UM, AND COUNSELLOR BORE'UM, IN AN
ACTION BETWIXT JOHN-A-GULL, AND JOHN-A-GUDGEON,
FOR ASSAULT AND BATTERY,

BY THE LATE

JOHN SURREBUTTER, Esq.,

SPECIAL PLEADER, AND BARRISTER AT LAW.

Anstey, John

AMERICAN EDITION

BY JAMES L. HIGH,

WITH NOTES.

ALBANY:
WILLIAM COULD & SON.

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THE
PLEADER'S GUIDE.

BOOK I.

PREFACE TO THE AMERICAN EDITION.

The first book of the "Pleaser's Guide" appeared originally in London, in the year 1796. Its publication was received with such favor at the hands of the profession that it was followed by the second book in 1802. Both of these are comprised in the present edition, and the original text, orthography and arrangement of the work have been preserved throughout. Of the notes to the original edition, some have been omitted, either as containing matter now obsolete, or as being explanatory of matters needing no explanation to professional readers. Others have been retained where their retention seemed necessary for the explanation of certain passages, and still others have been added where the meaning of the text seemed obscure.

It is confidently believed that the lawyer will find this little work a pleasant means of relaxation from the graver duties of the profession, and that the general reader will find in its pages sufficient of humor to warrant a perusal.

J. L. H.

Chicago, June 1, 1870.

SYLLABUS
OF
MR. SURREBUTTER'S
PROFESSIONAL LECTURES.

LECTURE I.

Mr. Surrebutter Proposes the Plan of his Lectures—
His address to the Gentlemen of the Law, particularly
to his kinsman, Mr. Job Surrebutter—The Plan of
Mr. Job's Education for the Study of the Law Com-
mended—The Superior Advantages of his Situation as
a Special Pleader's Pupil.

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Of the King, and his Prerogative—Of the Civil and
Municipal Administration of Public Justice, allegori-
cally delineated and compared.

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An Episode, containing authentic Memoirs of Mr. Surrebutter's Professional Career.

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The Pleader's Guide.

BOOK I.

LECTURE I.

Mr. Surrebutter Proposes the Plan of his Lectures:
His Address to the Gentlemen of the Law, particularly to his kinsman, Mr. Job Surrebutter—The Plan of Mr. Job's Education for the Study of the Law Commended—The Superior Advantages of his Situation as a Special Pleader's Pupil.

Of legal fictions, quirks and glosses,
Attorney's gains, and client's losses,
Of suits created, lost and won,
How to undo, and be undone,
Whether by common law or civil
A man goes sooner to the devil,
Things which few mortals can disclose
In verse or comprehend in prose,
I sing—do thou, bright Phoebus, deign
To shine for once in Chanc'ry lane;
And, Clio, if your pipe you'll lend
To Mercury, the lawyer's friend,

That usher of the golden rod,
Of gain and eloquence the god,
Shall lead my steps with guidance sure,
Safe through the palpable obscure,
And take my parchments for his labour
To cover your harmonious Tabor—
“*PINDUS to wit*,”—or where you choose,—
At Lincoln's Inn, or Arethuse,
For bards and lawyers both with ease
May place the venue where they please;
No matter where an action's laid,
Contract or a poem made:
Is there a proud o'erbearing wight
Who tramples on his neighbour's right,
Superior in his own opinion
To lawyers, and the law's dominion?
Say what compulsive mode of action
Must give the injured satisfaction;
What forms, what fictions must combine
To make the parties issue join,
And better may enable those
Who draw their pleas, or briefs compose,
To hold the balance of success
With such precision and address,
That both the combat may sustain,
And neither the advantage gain,
But when 'tis o'er and judgment given
The scales may prove so just and even,
That each may venture to make oath

The law's impartial to them both,
When both in rags their folly rue,
The victor, and the vanquish'd to.

Hear then, and deign to be my readers,
Attorneys, barristers, and pleaders,
Shrieves, justices, and civil doctors,
Surrogates, delegates, and proctors,
Grave judges too, with smiles peruse
The sallies of a lawyer's muse,
A buxom lass, who fain would make
Your sober sides with laughter shake ;
And, good my lords, be kind and gracious,
And though you deem her contumacious,
Ne'er to the Fleet, or Bridewell send her,
But spare a ludicrous offender,
Who longs to make your muscles play,
And give your cheeks a holiday.

Hear me, ye wits, and critics too,
And learned dames in stocking blue,
And you, ye bards, my book who dip in,
In hopes to catch its author tripping,
Some mercy still, and justice shew him,
And purchase ere you damn his poem

But, chiefly though, dear Job, my friend,
My kinsman, to my verse attend ;
By education form'd to shine
Conspicuous in the pleading line,
For you, from five years old to twenty,
Were cramm'd with Latin words in plenty,

Were bound apprentice to the muses,
And forc'd with hard words, blows and bruises,
To labour on poetic ground,
Dactyls and spondees to confound,
And when become in fictions wise,
In pagan histories and lies,
Were sent to dive at Granta's cells,
For truth in dialectic wells,
There duty bound for four years more
To ply the philosophic oar,
Points metaphysical to moot,
Chop logic, wrangle, and dispute ;
And now, by far the most ambitious
Of all the sons of Bergersdicius,
Present the law with all the knowledge
You gather'd both at school and college,
Still bent on adding to your store
The graces of a pleader's lore ;
And, better to improve your taste,
Are by your parent's fondness plac'd
Among the best, the chosen few,
(Blest, if their happiness they knew,)
Who for three hundred guineas paid
To some great master of the trade,
Have, at his rooms, by special favour,
His leave to use their best endeavour
By drawing pleas, from nine to four,
To earn him twice three hundred more,
And, after dinner, may repair

To 'foresaid rooms, and then and there
Have 'foresaid leave, from five to ten,
To draw th' aforesaid pleas again;
While thus your blissful hours run on,
Till three improving years are gone,
Permit me, with these rhymes, awhile,
Your leisure moments to beguile,
And guide your bold advent'rous ways
Safe through that wide and pathless maze
Where law and custom, truth and fiction,
Craft, justice, strife and contradiction,
With every blessing of confusion,
Quirk, error, quibble and delusion,
Are all, if rightly understood,
Conspiring for the public good,
Like jarring ministers of state,
'Mid anger, jealousy and hate,
In friendly coalition join'd,
To harmonize and bless mankind.

LECTURE II.

Of the King, and his Prerogative—Of the Civil and
Municipal administration of public Justice, allegori-
cally delineated and compared.

The King, o'er ev'ry cause supreme,
Be first the prelude of my theme,
In him, sans laches or misfeasance,
Resides ideal omnipresence ;

Him the just rights of empire give
For ever in his courts to live;
No wasteful lapse of rolling years
His just prerogative impairs ;
E'en time that's wont so swift to fly,
Stands motionless with majesty ;
How long soe'er a cause is stay'd
By orders, rules and motions made
On points by learned counsel mooted,
The king can never be nonsuited.
From him who feels his subjects woes,
The healing stream of justice flows ;
From him, derives its genuine source,
Howe'er polluted in its course,
Howe'er unpalatable made,
Defil'd, perverted, or delay'd ;
Blest fount ! from you th' oppress'd and weak
Ease to their cares and sorrows seek ;
Where'er thy genial waters stray,
Pride, rapine, fraud, and lawless sway,
Forbear the hallow'd ground to tread,
While truth by injur'd virtue led
With weeping innocence attends,
And prostrate o'er thy current bends,
To quaff the cup which bounteous heaven
To all impartially has given ;
But some amidst the legal throng
Who think to them thy streams belong,
Like those of Galen's learned tribe

Who some salubrious stream prescribe,
But chemicals and drugs infuse,
And all its healing powers abuse,
Pain to their tortur'd clients bring,
And make thy pure and wholesome spring
Foul as the pools which devils mix
At Chelt'nham, Harrogate, or Styx ;
And law itself so rich is grown
In terms and *nostrums* of its own,
That e'en the sages who expound
Its truths and mysteries profound,
(And none more learn'd, humane and just
Have e'er discharg'd their sacred trust)
Are forc'd to cite opinions wise,
Crok. Car. Crok. Jac, and Crok. Eliz.
And when some *recipe* they hit on
In Granville, Bracton, Coke, or Britton,
Their friendly succour interpose,
And hold the patient by the nose,
With care administer the portion,
Consult, and give him ease by *motion*,
And turn by tedious process quaint,
Acute to chronicle complaint.
Nor are they wanting who convey
Their *nostrums* in a civil way,
Doctors, who fond of consultations,
Their patients work with long quotations,
And as the nature of the fact is,
Torment them with a foreign practice ;

Pleas'd in mysterious terms to speak,
And cite some fav'rite *empirique*,
Some quack, of note in days of yore,
When science from the Latin shore
To Albion came, and Tibur's streams
First join'd her social waves with Thames,
'Twas then that fam'd academician,
That learned monk and politician,
He who Vacarius was call'd,
The wise *eleve* of Theobald,
And others by their priests escorted,
Those books of choice receipts imported,
Which at *Amalfi* lay conceal'd
Till by Lothario's arms reveal'd,
With these, their fortunes to prefer,
They set up shop at Westminster;
But of their practice were debarr'd
And fairly kick'd from Palace Yard,

Theobald.—Theobald, a Norman abbot, and archbishop of Canterbury, in the reign of King Stephen, introduced the civil law into England. Among others of his retinue he brought over with him *Roger*, surnamed *Vacarius*, whom he placed in the university of Oxford to teach it to the people of this country. *Blac. Com.*

Till thinking they had no intent
To hurt th' establish'd government,
O'er-rule the laws and ride the land
With Romish edicts contraband,
The nation, proud of the submission
Of men of birth and erudition,
Gave them a lodging, and in pity
Sent them to settle in the city,
Begg'd them to gather up their alls,
And vend their drugs behind St. Paul's—

Provided always that if e'er
Said quack, or quacks, should interfere,
Or any quack, in word or deed
Presume his province to exceed,
Or take upon him as a scholar,
Prohibitory writ should follow :
Blest writ ! by which their fees are stay'd
And briefs into our bags convey'd!

But of their practice—The extraordinary rise and establishment of the civil law created a jealousy throughout all Europe. King Stephen, issued a peremptory command preventing its propagation in England, and prohibiting Vacarius from reading lectures at Oxford, and making it unlawful for any one to keep any of the books of the Roman law by them. *Dissert. ad Flet. c. 7.*

A practice which must needs disgust 'em,
For as we thrive, they lose their custom;
But what they lose, or what they gain,
Has never yet disturb'd my brain :
Let others heed such broils and bustles
Who better can command their muscles ;
Enough for me, when client stands
With purse and parchment in his hands,
And claims my favour and protection,
To keep my features in subjection ;
Enough for me, with serious face
To puzzle and perplex his case,
Then give his purse a gentle squeeze,
And taste the flavour of his fees,
His sweet retainers, and refreshers,
And leave these classical professors
Mid barren fields of Roman lore
Their dreary journey to explore,
And lead through paths of fruitless science
Their comfortless bewilder'd clients.

LECTURE III.

Comparison continued—Of the Civil Law process—Excommunication—Serious Address to the Civilians, with certain weighty interrogatories—Mr. Surrebutter's personal superiority as a common Lawyer—Counsellor Bother'um and Counsellor Bore'um proposed to Mr. Job Surrebutter as models for his imitation.

Know all to whom these presents come,
The pandects of imperial Rome,
And every rescript and opinion
Of Theodosius, or Justinian,
Of Ulpian, Paulus, or Papinian,
With him who studied and profess'd 'em,
And had the stomach to digest 'em,
Old Gothofredus with a corpus
As fat and clumsy as a porpus;
Him too with all his *Galimatias*,
Scaliger's Jewell, sage Cujacius,

Theodosius—A Code of Civil Law was composed by order of the Emperor Theodosius the younger, and is still extant in sixteen books, containing a collection of the Imperial Constitutions, from Constantine, to his own time. It received the Imperial sanction in the year 438 A. C.

Justinian—Justinian published his Code about a century afterwards in the year 530, and has preserved the rescripts of the preceding Emperors.

Though still they keep their ancient state,
 Their grandeur, dignity, and weight,
 And claim respect like veteran beaux,
 Or mountebanks in tarnish'd clothes,
 Since Edward from his subjects broke
 The bondage of the Romon yoke,
 Are but a vain and empty shade
 Without the sanction and the aid,

Ulpian, Paulus, &c.—The greatest part of this island was governed wholly by the Civil Law for about 300 years from Claudius to Honorius, during which time some of the most eminent Roman Lawyers, as Ulpian, Paulus, and Papinian, presided in the Courts of Justice of this country.

Gothofredus—Dionysius Gothofredus, an eminent civilian, born at Paris in the year 1549, practised at Geneva in the year 1606, published in one large volume the whole body of the Civil Law or *Corpus Juris Civilis*.

Cujacius—*Ille Margarita Civilium* &c. Vid. Scaligerian: the most eminent civilian and most extraordinary genius of his time; he was born at Thoulouse in 1520, and taught and practised the Civil Law at Bourges. His works were published at Paris in ten volumes, in the year 1659.

Edward—Edward the First put a period to the important struggle between the Laws of England and Rome. Under his discipline the Laws of England obtained a complete and decisive victory. *Black. Com.*

The forms, the process, and the mode
Coercive of the British Code.

How vain's the civil law's *Citation*,
The *Libel*, oath and *Fulmination*.
Which Surrogate is wont to shed
By wholesale on the culprit's head!—
Did not the shrieval arm exempt
His *brutum fulmen* from contempt,
And lend a writ to back the curses
Which he so piously disperses,
With ease respondent might evade
The laws by priests and bigots made,
Their forms and fees of absolution,
And schemes of christian persecution,
For while his soul was doom'd to smart,
His body might in peace depart.
E'en he who erst his judgments hurl'd
With vengeance o'er the christian world,
Pull'd down the mighty from their seats,
Crush'd empires with his holy threats,
Absolv'd our souls, our sins forgave,
And promish'd every w—— and k——
Celestial beds * * *

* * * * *

[*Here the manuscript is imperfect.*

* * * * *
* * * * *

Since then to Alfred's potent sway
Justinian's genius must give way,

To Serjean's coifs, Civilian's hoods,
Justinian's institute to Wood's,
What boots it that your youth is spent
In dull Cimmerian cloister pent ?
Why brood ye o'er the toilsome page
Like pupils of the Samian Sage
In silence, till the cheerful sun
Has twice seven years his circuit run,
Poring o'er Puffendorf and Grotius,
Ye learned sons of Theodosius ?
Say when your golden hours begin
What are your rents and comings-in ?
Oh ! say, for you can best inform us,
Good doctor Brone, and doctor Dormous,
What mean those periwigs enormous ?
Can you upon your oath declare
That all those costly loads of hair
Are the clear produce of your gains,
The clean net harvest of your brains ?
Are ye proprietors of these,
Or merely usufructu'ries ?
I grant that matrimonial jars,
Rapine, adultery and wars;
By others deem'd the worst of curses,
Have done you justice, fill'd your purses,
And prov'd themselves no bad resources.
But in your starving times of peace,
When naval condemnations cease,
And marriages are held in force

By that construction in divorce
Which lately caus'd so much confusion
Touching the doctrine of collusion,
That husbands now by wives cornuted
Are patiently to bucks transmuted,
And ne'er apply to cunning men
To bring them to their shapes again,
Your visages, I must conclude,
Will much increase in longitude;
Peace which brings blessings to the nation
Will make a Lent of long vacation,
Your clients when they bring their cases
Will read Good Friday in your faces,
And ev'ry individual cheek
Remind them of an ember week.
Thank heav'n, in war as well as peace
My person thrives, and fees increase;
Not e'en the wretches I undo
Will look so woebegone as you;
But through our separate walks we take,
Through our respective planets make
Such difference 'twixt ourselves and you,
Since two congenial trades we woo,
Both in the folly of mankind
Such comfort and advantage find;
Both to the field of battle go,
Like Swiss to fight for freind or foe;
I much esteem such worthy neighbours,
And much your smiles will cheer my labours,

While to my kinsman I impart
The secrets of the pleading art,
Teach him the best and readiest way
To harass and secure his prey,
Shew him the practice of *attaching*,
Distraining, hunting down and catching,
In *trespass* how to spread his net,
In *case*, in *trover*, or in *debt*.
And not to spread alone, but draw
Assignments, and demur in law;
Then when the issue is enroll'd,
And at the bar the story told,
Give him with eloquence and grace
So well to varnish o'er the case,
That e'en the judges curious eye
Shall scarce its rotten parts descry,
And though the facts as noon-day clear
Against his client's cause appear,
Give him with fustian and bombast
So thick a fog o'er truth to cast,
With words of such due size and fitness
To badger and confound a witness,
That all who hear him shall confess
For language, manner and address,
He fairly equals in renown
Those two choice heroes of the gown,
So fam'd for Ciceronian ease
And Demosthenic deinothes,
Those nestors of the British forum,

Th' illustrious Bother'um and Bore'um.

But since these distressful days
 When hunger prompts poetic lays,
 And bards who feel no other fire
 Than what th' Aonian nymphs inspire,
 No cordial sip save what distils
 From Aganippe's purling rills,
 Retiring from the vales of Pindus
 To garret vile with darken'd windows,
 Are forc'd by lofty invocations
 To swell their meager publications,
 And while they rest in time of need
 To bait the Pegasean steed,
 Implore some deity's kind favour
 To give their tasteless rhymes a flavour,
 I, who by law and justice claim
 As fair pretensions to the same,
 Shall beg some godhead to attend
 And help me to my journey's end,
 And lengthen out by frequent pauses
 My lectures, as I've done my causes.

And first bright Cynthus I'll *subpœn'*
 From hallow'd fount of Hippocrene,
 And *summons* from th' Aonian grove
 The daughters of Olympian Jove;
 But if those sweet harmonious maids
 Disdain to quit their vocal shades,
 Nor Cynthus will his fount forsake—
 To gloomy Dis my prayer I'll make,

And seek the Acherontic Lake,
Down to the Hall of Erebus I'll go,
And *move* some dæmon in the *courts below*.

LECTURE IV.

Of the Common Law Process—Invocation to an Infernal Spirit—Of the Original, or Original Writ—And Process thereon—The High Sheriff—His Executive Power—Of Law Fictions.

Come then thou goddess of contention,
Genius of craft, and circumvention,
You, who in parchment robes array'd,
And tape-tied vest of vellum made,
With ink-stain'd lips, and eye-balls blear'd,
And thumbs with wax and rosin smear'd,
The baleful bitter draughts prepare
Of poverty, revenge and care,
And every tender tie remove
Of amity and social love;
Where'er you wield the law's machine,
Whether at Lincoln's Inn you're seen,
Or those fam'd walls where serjeants sleep,
And plodding clerks their vigils keep,
Or at the Temple, as thy trust is,
Open the sacred mint of justice,
Whate'er the learned haunt you love,
Where'er thy busy footsteps move,
Say, if some dire occasion leads
Two simple wights to logger-heads,
Such as of late bred doleful dudgeon

Twixt John-a-Gull, and John-a-Gudgeon,
(Those ill-starr'd chiefs whose wrath to sing
'Vent'rous I 'wake the trembling string,)
What instrument of dread import
Must bring the parties into court,
From juries to obtain relief,
And justice from a counsel's brief?—
The writ—from chancery it came,
And pleaders must adore the name,
The writ, that works the public good
Oft saves th' expense of christian blood :
Oft, when two champions burn with rage
And pant in combat to engage,
Both fix'd their valour to proclaim,
Both resolutely bent to aim
(Whether with paper charg'd or lead)
A pistol at each other's head,
Calmly steps in, bids reason 'wake,
And wrath her rash resolves forsake,
The instruments of death restrains
And spares a trembling hero's brains,
Yet loth to disappoint the devil,
Involves them in a sorer evil,
The worst of evils 'tis confess'd
(But guard this secret in thy breast);
With law entangles and turmoils,
And holds them in a pleader's toils—
The writ original—the root
And master spring of every suit,

Which erst in mouldy hamper slept
By lawyers hanaper yclept,
Was held much learning to display
When learning in her cradle lay;
Then first its influence began
To charm like Eastern talisman,
In form grotesque, and antique guise,
Which justice did of old devise,
With parchment wing and signet pendant
Flew forth to summons the defendant,
Stuttering abbreviations mystic
In sign and token cabalistic,
Latin surcharg'd with Norman French,
Returnable to common bench,
A mixture, which like that of Babel,
The shrieve to construe was not able,
And though by law no human creature
Ad impossibile tenetur,

Hamper or Hanaper—In Latin *Hanaperium*. The Hanaper office belongs to the common law court in chancery. Original writs, in all matters of a civil nature between subject and subject, were kept according to the simplicity of ancient times, in a hamper, as those in which the interests of the Crown were concerned were preserved in a *small bag*, (*in parva бага*) which is the foundation of what is now called the Petty bag office.

Black. Com. Vol. 3. c. 4.

Defendant at the shrieve's command
 Must at his peril understand;
 But he perhaps who lack'd the wit
 To scan the learning of the writ,
 Was much to wise at once to close
 And grapple with his injured foes,
 Might rather wish to be excus'd
 From taking pains to be abus'd,
 Content his person to *eloign*,
 Or stay at home and cast *essoign* :
 But though the law in modern days
 Three barbarous tongues no more displays,
 Like Pluto's triple headed monster,
 And pleaders can their pleadings construe,
 Though sheriffs now the writ's intent
 Are taught by Act of Parliament,
 And all mankind so wise are reckon'd
 E'er since the fourth of George the Second,
 That none against the laws in use

Eloign—*Eloigner*, Fr.—To remove, or send away.

Effoign or *Effoine*, Fr. *Effoinium*, Latin,—signifies an excure for him who is summoned to appear to the Original Writ. The original writ is made returnable within fifteen days, the *Effoign* day is the first of three days next immediately preceding that on which the court sits for the dispatch of business, and on which the defendant is obliged to appear to the writ.

From ignorance can plead excuse,
Still lest the suit should be delay'd,
And justice at her fountain stay'd,
A *Capias* is conceiv'd and born
Ere yet th' original is drawn,
To justify the court's proceedings,
Its forms, its processes, and pleadings,
And thus, by ways and means unknown
To all but heroes of the gown,
A victory full oft is won
Ere battle fairly is begun ;
Tis true, the wisdom of our laws
Has made the effect precede the cause,
But let this solecism pass—
In fictione æquitas—

Three barbarous, &c.—Till the reign of Edward the Third, all proceedings at law were in the old Norman French, but by a statute of that King's reign, (36, c. 15.) it was enacted that all Pleas should be pleaded, &c., in the English tongue, but be entered and enrolled in Latin. The Latin which succeeded the French, and which was in truth a composition of French, English and Latin, continued in use for 400 years, without interruption, till the usurpation of Cromwell, when the language of the Record was altered into English, but at the Restoration, the Latin language was again used, and continued till the year 1730, when it was finally altered and settled by 4 Geo. 2d. c. 26.

LECTURE V."

Process continued—Of the Writs Latitat¹—Capias—
Quo Minus—Of filing Common Bail—Of Special Bail,
or bail to the Action.

Light lie the sculptur'd marble o'er his breast,
Blaz'd be his virtues, and his sins suppress'd,
And wheresoe'er his bones are laid
Thrice honour'd be that lawyer's shade,

Latitat¹—A writ so termed because it suggests, as the ground of the power therein given to the Sheriff, a fiction in law, viz. that the defendant is not to be found in the county of Middlesex to be taken by Bill of Middlesex, as it is called, but lurks and lies hid, or, as it is expressed, runs up and down secreting himself within the Bailiwick of the Sheriff, to whom the writ is directed; F. N. B. 78. It is in practice the first process in order to compel an appearance in the King's Bench, in the like manner as the Capias is in the Common Pleas: the Capias proceeds as was before shown upon a fiction, that the original had been previously sued out, and the Latitat issues in the King's Bench upon the like fiction, that the Bill which is called the Bill of Middlesex in that court, has actually issued to the Sheriff of that County, and been returned as ineffectual.

Who truth with nonsense first combin'd,
 And equity with fiction join'd,
 And had the goodness to assign us
 Latitat, capias and quo minus!
 Melodious sounds! at once they cheer
 My spirits, and regale mine ear,
 What bard howe'er in fiction vers'd,
 By rhyme subpœn'd and coerc'd,
 Due homage to their worth shall pay
 And all their various powers display?
 If haply John-a-Stile provoke
 The legal fight 'gainst John-a-Noke,
 The latitat the foe besieges
 And baffles him in banco regis
 Skill'd with ac-etiams² to perplex
 And foil with bills of Middlesex³,
 Quo minus guides the wordy war

Ac-Etiam²—An Ac-Etiam is a clause inserted in the Latitat, by virtue of the 13th Car. 2. c. 2. which enacts, that no writ of trespass should hold defendant to bail, &c., any further than an appearance, unless the true cause of action was expressed in the Writ. And therefore in a Latitat it runs thus, after the words to answer A. B, in a Plea, &c., and also to a Bill of the said A. against the said B. to be exhibited according to the custom of our court before us for £—— upon promises, or debt, as the case may be.

And mates⁴ him at th' exchequer bar,
 While Capias is rejoic'd to seize
 And plunder him at common pleas⁵:
 Nor will it boot th' indignant Noke
 Or God or goddess to invoke,
 Nor God nor goddess shall convey
 His person from th' impending fray,
 Doom'd in the action to appear,
 E'en though the ambient cloud he wear,
 Which Laertiades of yore,
 Or Citherea's offspring wore.
 For lo! a grisly Shrieval band
 That round the seat of justice stand,
 Give dreadful note of preparation⁶
 And summons him to litigation,
 Force him the doubtful war to wage,
 To file his sureties and engage,

Bill of Middlesex⁸—A Bill of Middlesex is a precept directed or presumed to be directed to the Sheriff of that county in which the Court of King's Bench sits, for if it sat in any other county, it would be termed a Bill of that County; it is called a Bill, and signed Per Billum, to distinguish it from the original. It formerly issued to warrant the Testatum, or as it is now called the Latitat, of which above; but modern practice has consolidated the two writs in effect, by reciting in the Latitat that the Bill of Middlesex has already issued, which is generally false.

Or if the summons he resists,
 Enter his name⁷ upon the lists,
 Where each blest fiction is enroll'd
 The legal conflict to uphold,
 All for the wisest ends constructed,
 That suits may better be conducted,
 That every lawyer in his station
 May reap the fruits of his vocation,
 That Pleas and Pleadings may prevail,
 And justice equal hold her golden scale.

But yet alas ! not all conspire
 Such legal wisdom to admire.
 There are of writs who disapprove,
 Dread bail below and bail above,⁸

Mates⁴ him—The Exchequer took its name a *Tabula ad quam assidebant*. Camden Brit. p. 113. The table is covered with cloth resembling chess board, whereon when certain of the King's accounts are made up, the sums are marked and scored with counters. *Blac. Com.* vol. 3. p. 44.

Common Pleas⁵—*Communia Placita*, the Court of Common Pleas holds connusance of all Pleas which are not of the Crown, and which being between subject and subject, are properly denominated Common Pleas. Some have supposed that the word Pleas is short for the word *Pleasures*, and that the term Common Pleas, as applied to the practice of the Court, means the Pleasurers of the Community.

Whom worse than goblins damn'd, the sight
Of Sheriff's myrmidons affright,
The silver tag, and vermil stamp
Chill to the soul with horror damp :
These scent the process from afar,
And fly the din of parchment war,
But let the plaintiff, ere he sue
In debt or case for money due,
Swear to the sum, with writ indorse,
And let the shrieve said writ enforce,
Be quick to execute, but slow
To take the proffer'd bail below,
Lest with the plaintiff's suit embroil'd,
The Shrieve⁹ at his own weapons foil'd,
The bond assign'd, the debtor fled,
Himself defendant in his stead,
Be doom'd with curses to bewail
The horrors of insolvent bail,

Note of Preparation⁶—The English Notice is here alluded to, which is used in all cases where the defendant is not to be held to bail.

Enter his name⁷—In case the defendant fails to file Common bail or enter his appearance, the Statute 12 Geo. First, empowers the plaintiff to enter an Appearance for him, and to leave a declaration in the proper Office, and upon giving him notice to plead thereto, to proceed to judgment.

His folly to his cost expose,
 And bear the weight of others' woes ;
 Till by the plaintiff vex'd, and sped,
 Fresh suits impending o'er his head,
 He feels in dreams, or seems to feel
 His own bum-bailiff¹⁰ at his heel,

Bail below and bail above⁸—The word Bail is derived from the French *bailleur*, to deliver, because the defendant when arrested, is delivered over to his Sureties, who bind themselves for his forth-coming at a day and place certain. Bail *below* is the bail to the Sheriff, taken by him, upon the Execution of the Writ of Arrest. This species of Bail is called *special*, as contradistinguished from common bail, beforementioned, the Sureties being real and substantial bondmen, and not fictitious, as in the case of Common Bail. Bail *above* is the Bail in Court, upon the Defendant's appearance at the return of the Writ, or four days after. It is likewise termed Bail to the Action, and is effected by what is called Justifying Bail, or the Oath of the Sureties upon examination as to their competency and responsibility.

The Shrieve⁹, &c.—If the Sheriff accept bail, which afterward prove insolvent, and does not cause sufficient bail to be put in above, he will be himself responsible to the Plaintiff.

The Sheriff is liable to an action for taking insufficient bail, as well as to amercement. *Raymond* 425. *Salk* 99. *Sid.* 96. 2 *Saund.* 58, 59.

Flies his own writs, and strives to shun
Th' ideal form of frightful dun,
Which e'en in sleep his arm assails,
Nor aught his shrieval wand avails
To conjure down the restless sprite,
Or speed him in his fancied flight.

¹⁰ *Bum-bailiff*, is a corruption of the word bound-bailiff, or special bailiff, as contradistinguished from the bailiff of a hundred.

LECTURE VI.

Of Process against privileged persons—Of the *distingas*—Its physical and chirurgical qualities—Process to outlawry, and the party's appearance upon the *capias utlagatum*.

Lives there a senator unplac'd,
Already ruin'd and disgrac'd,
A legislator who retires
Before his privilege expires,
Sans house, sans land, sans goods and chattels,
Or party friend to fight his battles?
No writ his footsteps can detain,
No process can his skin distract,
And though a sudden dissolution,
Might fit him for an execution,
'Twere best a prudent course to take,
And spare him for his country's sake;
For could a member's skin when dried
Make parchment like ¹ John Zisca's hide,

¹ *John Zisca*—This anecdote of John Zisca, is recorded in Mr. Burke's celebrated letter to the Duke of Bedford, which leaves little room to doubt that this very eminent and ingenious writer must have obtained a sight of Mr. Surrebutter's Professional Lectures in the original M. S.

Would it not favour of extortion
Should ev'ry lawyer take his portion ?
Great heroes howsoever inclin'd
To harass and destroy mankind,
Ne'er flesh the steel, or roll the thunder,
Without some hopes of fame and plunder;
And lawyers who no less delight in
The trade of quarrelling and fighting,
Should be as kind and tender hearted
To those who with their cash have parted,
Ne'er from the paths of honor swerve,
But hold compassion in reserve,
And where they see no hopes of booty,
Abate the rigour of their duty.
Tis true, there are, in whom you'll find
Birth, splendor, pride, and meanness join'd,
Who writs by privilege elude,
Yet labour for the public good,
Against a nation's debts inveigh,
Yet scorn a tradesman's bill to pay,
Who pains and penalties create
For grand defaulters in the state,
Yet fain would 'scape the sheriff's search,
And leave a plaintiff in the lurch ;
But thou, O Shrieve, art not the son
Of the wise Jew King Solomon,
Nor canst thou claim the least pretence
To common law or common sense ;
Shouldst thou one legal step neglect

Their stubborn humours to correct,
 Take your *distringas*, come athwart'em
 And operate *secundum artem* :
 You'll find it, in its full extent,
 A pretty useful instrument,
 For making issues with, the quicker
 To drain their cash into the exchequer,
 With this same instrument pursue'em,
 And drain them till you quite undo'em ;
 Work them, till thoroughly aggriev'd,
 Of goods and chattels they're bereav'd ;
 In every legal operation
 There's nothing like evacuation.

But is there one who unprotected
 Has long his creditors neglected,
 Without the privilege to shine
 Or slumber in St Stephen's shrine,
 A lazy wight, of snugness fond,
 Who'd fain from love of ease abscond,
 And just has learn'd enough of law
 To make him all its ways abhor,
 Has heard that ² *quare clausum fregit*

² *Quare clausum fregit*—The Writ of *capias* before mentioned as the leading process of the court, is here alluded to under a different name; if the defendant is to be held to bail, it is used with an *ac etiam*, (of which before) and is called a bailable *capias*; if not, the

May breed a monster call'd *elegit*,
 Conceives that ³ *Ca' sa's* are vexatious,
 And shudders at a *feri facias*?
 If rich, do thou, O Shrieve, make sure
 His goods or person to secure,
 Give him by way of how d'ye do
 A smack of your *distringas* too,
 But first attach him, and attend
 With *capias ad respondend'*;
 Let loose the dogs of war and furies,
⁴ *Testatum, alias and pluries*;

English notice is subjoined, in lieu of the *ac etiam*, in pursuance of the 12 Geo. I. and it is then called a *common clausum fregit*.

³ *Ca' sa's* — A *ca' sa* as it is called, or *Capias ad satisfaciendum*, is a writ of execution directed against the body of the defendant, in satisfaction of the plaintiff's debt.

⁴ *Testatum*, or *testatum capias*, is a second writ of *capias*, directed to the Sheriff of another county upon the return of the first *capias*, and is so called from the principal word that occurs in it; it recites the former writ, and states that it is testified, (or *testatum est*) that the defendant lurks or wanders in the bailiwick of the sheriff to whom the writ is directed, and upon the sheriff's return of *non est inventus*, there issue successively the *alias* writ and the *pluries* writ, which are so

But if at length *non est invent'*,
 At him again with ⁶*exigent*,
 Proclaim him by the act's direction
 (Act 31st Eliz. 3d section,)
 Then smite him as a *coup de grace*
 With ⁶*utlagatum capias*.

Exacted, outlaw'd and embruted,
 His head to head of ⁷ wolf transmuted,
 Compell'd by writ of *exigenter*

called because after the words, "we command you," (*præcipimus*), the words *sicut alias*, or *sicut pluries*, "as we have formerly, or, "as we have often commanded you," occur in these writs, as the reason of their being issued.

⁶ *Exigent*—If the sheriff returns *non est invent'* upon all the writs, a writ of *exigent* may be sued out, which requires the sheriff to cause the defendant to be proclaimed, required, or exacted, in five county courts successively, and if after being so exacted, he does not appear, he is outlawed.

⁶ *Utlagatum capias* is the writ authorizing the arrest of the defendant, and his commitment to prison till the outlawry is reversed.

⁷ *Wolf*.—Alluding to the ancient common law doctrine of outlawry, the punishment whereof was death, and therefore an outlaw was said to bear *caput lupinum*, because any man might kill him as he might kill a wolf. *Utlagata et waviata, capita gerunt Lupina quæ*

The lists against his will to enter,
 See where the captive wretch in court
 Meet subject both for gain and sport,
 By writ, as by the cup of Circe,
 Transform'd, and at the plaintiff's mercy,
 Stands like a Roman gladiator,
 To do a deed against his nature;
 While we who compass'd his undoing
 Claim the sole merit of his ruin ;
 For this we never sought your aid,
 Ye doctors of the civil trade,
 Nor ever thank'd you for a curse
 To help us to defendant's purse,
 Or strip him of a single chattel,
 Ye learned votaries of Vattel.

Now doctors, reperuse this case,
 And study the defendant's face,

ab omnibus impune poterunt amputari, merito enim sine lege perire debent qui secundum legem vivere recusant.
 Process to Outlawry lies in all actions *vi et armis* ; by Stat. 13 Ed. I. it lies in account ; by 25 Ed. III. c. 17. it lies in debt, detinue and replevin ; and by 19 Hen. VII. it lies in case and in trespass ; it is now considered, and used only as a process to compel an appearance, and may be reversed upon the defendant or his attorney appearing in court, and indemnifying the plaintiff in full costs.

Read in his looks the operation
Of legal charm and conjuration,
A woeful visage worn with cares !
Such as an exil'd patriot wears—
But could you gain a sight of mine,
You'd take me for a sleek divine,
Whose smooth cherubic features shew
The fruits which from good living flow ;
Tis true the nature of my face
Bears fewer signs of inward grace,
Though something on the whole you'll find
Which indicates no vulgar mind,
A certain graceful tinge of copper,
That's quite professional and proper :
But by what charm or magic spell
I look so plump, and thrive so well,
So gay, so blithe in my demeanour,
While you so splenetic and lean are,
If I am cited to confess,
The muse shall venture to digress,
In sportive rhyme of artless mould
Her "plain unvarnish'd tale unfold",
And cheerfully obey your summons,
Good gentlemen of doctors commons.

LECTURE VII.

An episode containing authentic memoirs of Mr. Surrebutter's professional career.

Who'er has drawn a special plea,
 Has heard of old Tom Tewkesbury,
 Deaf as a post, and thick as mustard,
 He aim'd at wit, and bawl'd and bluster'd,
 And died a *nisi prius* leader—
 That genius was my special pleader—
 That great man's office I attended,
 By Hawk and Buzzard recommended,
 Attorneys both of wondrous skill
 To pluck the goose, and drive the quill;
 Three years I sat his smoky room in,
 Pens, paper, ink and pounce consuming,
 The fourth, when essoign day begun,
 Joyful I hail'd th' auspicious sun,
 Bade Tewkesbury and clerk adieu,
 (¹ Purification, Eighty-two)

¹ *Purification*—The morrow of the Purification of the Blessed Virgin Mary is one of the return days of Hilary Term.

Of both I wash'd my hands ; and though
With nothing for my cash to shew,
But precedents so scrawl'd and blurr'd,
I scarce could read one single word,
Nor in my books of common place
One feature of the law could trace,
Save Buzzard's nose and visage thin,
And Hawk's deficiency of chin,
Which I while lolling at my ease
Was wont to draw instead of pleas ;
My chambers I equipt complete,
Made friends, hired books, and gave to eat ;
If haply to regale my friends on,
My mother sent a haunch of ven'son,
I most respectfully entreated
The choicest company to eat it,
To wit, old Buzzard, Hawk, and Crow,
Item, Tom Thornback, Shark and Co,
Attorneys all as keen and staunch
As e'er devour'd a client's haunch ;
Nor did I not their clerks invite
To taste said ven'son hash'd at night,
For well I knew that hopeful fry
My rising merit would descry,
The same litigious course pursue,
And when to fish of prey they grew,
By love of food and contest led,
Would haunt the spot where once they fed ;
Thus having with due circumspection

Form'd my professional connexion,²
 My desk with precedents I strew'd,
 Turn'd critic, danc'd or pen'd an ode,
 Studied the *Ton*, became a free
 And easy man of gallantry :
 But if while capering at my glass,
 Or toying with some fav'rite lass,
 I heard th' aforesaid Hawk a-coming,
 Or Buzzard on the staircase humming,
 At once the fair angelic maid
 Into my coal-hoal I convey'd,
 At once, with serious look profound,
 Mine eyes commercing with the ground,
 I seem'd like one estrang'd to sleep,
 "And fix'd in cogitation deep,"
 Sat motionless, and in my hand I

² It is difficult to conceive a more fitting satire than these few lines contain upon the rigid distinctions which in England yet prevail between the two branches of the legal profession, barristers and attorneys. Unless indeed the young barrister be endowed with the highest sense of professional integrity the temptation is almost irresistible to pander to the attorney class with a view to possible briefs, and fat retainers ;

"And crook the pregnant hinges of the knee,
 Where thrift may follow fawning."

AMERICAN EDITOR.

Held my ³ *doctrina placitandi*,
And though I never read a page in't,
Thanks to that shrewd well-judging agent,
My sister's husband, Mr. Shark,
Soon got six pupils and a clerk,
Five pupils were my stint, the other
I took to compliment his mother ;
All round me came with ready money
Like Hybla bees surcharg'd with honey,
Which, as they press'd it so genteelly,
And begg'd me to accept so freely,
Seem'd all so fond of special pleading,
And all so certain of succeeding,
I, who am always all compliance,
As well to pupils as to clients,
Took as genteelly as they paid it,
And freely to my purse convey'd it ;
That I might practically shew,
And they in special manner know,
Ere they began their pleas to draw,
What an *assumpsit* meant in law—
To wit for divers weighty sums
Of lawful cash at pleader's rooms,
By me said pleader, as was prudent,
⁴ Had and received to use of student ;
In short, I acted as became me,

³ *Doctrina placitandi*, "or the art and science of special pleading" a book so entitled, showing where and in what

And where's the Pleader that can blame me?
 Not one of all the trade that I know,
 E'er fails to take the readyrino,
 Which haply if his purse receive,
 No human art can e'er retrieve.
 Sooner when Gallia's credit's flown
 To some Utopian world unknown,
 Astræa shall on earth remain
 The last of the celestial train,
 To tender assignats at par
 Triumphant in the *Champ de Mar'*,
 And when their deep-laid projects fail,
 And ⁵ guillotines no more avail,
 Her baffled statesmen shall excise

cases, and by what persons, pleas, as well real as personal, and mixed, may be properly pleaded."

⁴ The action for money had and received, lies only for money which, *ex æquo et bono*, defendant ought to refund. Com. dig. Tit. Action on the Case—in assumpait, a. 1. and for money paid by mistake or on a consideration which happens to fail. 16.

⁵ The poem having originally appeared at a time when the stirring scenes of the French Revolution were still fresh in the memory of men, sufficiently explains the allusion here conveyed. English literature of that period abounds with frequent allusions of a kindred nature.

AMERICAN EDITOR.

Some new found region in the skies,
And tow'ring in an air balloon
Pluck requisitions from the moon;
Sooner the daring wights who go
Down to the watery world below,
Shall force old Neptune to disgorge
And vomit up the Royal George,
Than he who hath his bargain made
And legally his cash convey'd,
Shall e'er his pocket reimburse
By diving in a lawyer's purse.

LECTURE VIII.

Memoirs continued—Mr. Surrebutter is called to the Bar—Goes the Circuit—The character of Mr. Joseph Ferret, a country attorney—Subject resumed—Instructions in the art of Special Pleading—Messrs. John Doe and Richard Roe—Conclusion of the first book.

Thus in my saddle I was seated,
Ere scarce one *lustrum* was completed,
But when my mental powers I weigh'd,
My figure and my mien survey'd,
A bold caustical appearance,
Strong nerves, strong parts, and perseverance,
Far nobler views inspir'd my mind,
It seem'd that nature had combin'd
An eye to threaten and command,
And brows no mortal could withstand,
With lungs of Æolus and Stentor,
For some great purpose, peradventure,
There is, I cried, (and dropt my pen,)
A tide in the affairs of men,
Which leads to fame and fortune those
Who take it while the current flows,
There is, ye Gods, there is a crisis,
I'll seize it whatsoe'er the price is:
Prozer was dead, and Serjeant Quirkit

Grew husky, and had left the circuit,
And as for Shark's friend Shovelnose,
We long had deem'd him meat for crows ;
I scorn'd in this dull scene to tarry,
Essay'd at once a loftier quarry,
At once indulg'd my fav'rite biass
And stamp'd my fame at *nisi prius* :
So now I take my brace of nags,
My note-book, clerk and saddle-bags,
And saunt'ring gently on my journey,
Look out for some good rich attorney,
One that's a judge of parts and merit,
Such as that choice discerning spirit;
My worthy little friend Joe Ferret,
That honest, free, good natur'd soul
Who stands so high upon the roll,
And fills with such *eclat* and grace,
That pretty comfortable place,
He gain'd by government connexions,
And prudent conduct at elections,
By making ministerial bounty
Pass for his own throughout the county :
A friend to all who are oppress'd,
And seek by law to be redress'd,
One that abhors all compositions,
All mean retraxits and submissions,
Scorns arbitrations as a stain
To ninth and tenth of William's reign,
Acts, which he deems mislead his clients,

Cramp genius, and degrade the science ;
But when the sparks of discord rise,
Should parties wish to compromise,
My little friend provokes the flame,
Encourages and spreads the same,
And with such zeal and judgment blows
The coals of strife 'twixt friends and foes,
He ne'er can fail at 'ssize or session,
Of growing warm by his profession;
His garden's neat, the messuage good,
The best in all the neighbourhood,
With door chinese the front is grac'd,
His windows are of gothic taste,
The which, to me, though all the village
Conceive they're got by fraud and pillage,
And both th' exciseman and the rector
Despise his taste in architecture,
To me, whose taste is less refin'd,
And more to social joys inclin'd,
If chance my penetrating eye
His glitt'ring neat buffet descry,
A goodly symptom! and behold
His well scour'd knocker shine like gold,
Look all so pretty and inviting,
I make no scruple of alighting ;
At said attorney's fix my quarters,
Flatter and flirt with all his daughters,
With Kitty Ferret dance cotillions—
While you, ye worthy rum civilians,

Ye sober, persevering stagers,
 Hammer your ¹ minors and your majors,
 And lapt in smoke, and vapours dank,
 Pore over Lindwood and Lanfranc.—

But soft awhile, me thinks dear Job,
 Our brethren of the scarlet robe,
 Lull'd by the music of my numbers,
 Seem to resume their wonted slumbers ;
 Good Mercury, with caution tread,
 And Morpheus wave thy wand of lead ;
 While they enjoy their meditations,
 We 'scape their excommunications.
 Meanwhile do thou the ² tale declare, .
 Meet weapons of offence prepare,

¹ *Minors*—The *major* excommunication separates those on whom it is inflicted, not only from the mystical body of the Church, and from spiritual communion, but also from the society of the faithful : the *minor*, or lesser excommunication separates only from the passive communion or receiving of the sacrament.—These may be inflicted by sentence of the ecclesiastical judge—Vid. *Lenwood de Senten. Excom.* C. Ult. Gloss. *Wesembery* and *Lanfranc*—authorities greatly relied on in matters of spiritual cognizance, and the practice of the Ecclesiastical Courts.

² *Tale*—The tale or narration contains the story of the plaintiff's case, and is more commonly called the *declaration*.

Open your budget of resources,
Muster your powers, collect your forces,
The truth, and all the truth, discover,
And add such flourishes moreover,
Such aggravations, and additions,
Embellishments, and repetitions,
As youthful fancy oft begets
On some young special pleader's wits,
Which serve like notes of commentators,
Or speeches of confus'd debaters,
To puzzle e'en by explanation,
And darken by elucidation,
For puzz'ling oft becomes your duty,
And makes obscurity a beauty;
And trust me 'tis of wond'rous use
By nonsense to improve abuse,
As I, thank Heaven, so oft have done,
And worthily my race have run.

Then let us pray for writ of ³*pone*,
John Doe and Richard Roe his crony,
Good men, and true, who never fail
The needy and distress'd to bail,

³ *Pone*—The *pone* is the writ of attachment before-mentioned, it is so called from the words of the writ, *Pone per vadium et salvos plegios*, "Put by gage and safe pledges, A. B."

Direct unseen the dire dispute,
And pledge their names in ev'ry suit—
Sure 'tis not all a vain delusion,
Romance, and fable ⁴ Rosicrusian,
That spirits do exist without,
Haunt us, and watch our whereabouts;
Witness ye visionary pair,
Ye floating forms that light as air,
Dwell in some special pleader's brain;
Am I deceived? or are ye twain
The restless and perturbed sprites
The manes of departed knights,
Erst of the post? whose frauds and lies
False pleas, false oath, and *alibis*
Rais'd ye in life above your peers,
And launch'd ye tow'rds the starry spheres,
Then to those mansions "unanneal'd",
Where unrepented sins are seal'd:
Say wherefore in your days of flesh
Cut off, while yet your sins were fresh,
Ye visit thus the realms of day,
Shaking with fear our frames of clay,
Still doom'd in penal ink to linger,
And hover round a pleader's finger
Or on a writ impal'd, and wedg'd,

⁴ *Rosicrusian*—For an account of the theory of the Rosicrusian system, see Pope's Rape of the Lock.

For plaintiff's prosecution pledg'd,
Aid and abett the purpos'd ill,
And works of enmity fulfil,
Sill doom'd to hitch in declaration,
And drive your ancient occupation ?
While thus to you I raise my voice,
Methinks I see the ghosts rejoice
Of lawyers erst in fiction bold,
Levinz, and Lutwyche, pleaders old,
With writs and entries round him spread,
See plodding Saunders rears his head,
Lo ! Ventriss wakes ! before mine eyes
Brown, Lilly, and Bohun arise,
Each in his parchment shroud appears,
Some with their quills behind their ears,
Flourish their velvet caps on high,
Some wave their grizzel wigs and cry
Hail happy pair ! the glory and the boast,
The strength and bulwark of the legal host,
Like Saul and Jonathan in friendship tried,
Pleasant ye lived, and undivided died !
While pillories shall yawn, where erst ye stood,
And brav'd the torrent of o'erwhelming mud,
While gaming peers, and ^s dames of noble race,

^s *Dames*—Mr. Surrebutter in this passage seems to have contemplated the probability of certain characters of both sexes in the fashionable world, exhibiting their persons in the pillory for keeping public gaming tables.

Shall strive to merit that exalted place ;
While righteous scriv'ners, who when Sun-
day shines,
Pore o'er their bills, and turn their noughts
to nines,
(Their unpaid bills, which long have learn'd
to grow
Faster than poplars on the banks of Po,)
Freely shall lend their charitable aid,
To young professors of the gambling trade ;
While writs shall last, and usury shall thrive,
Your name, your honor and your praise shall
live :
Jailers shall smile, and with bumbailiffs raise
Their iron voices to record your praise,
Whom law united, nor the grave can sever,
"All hail John Doe and Richard Roe for ever."

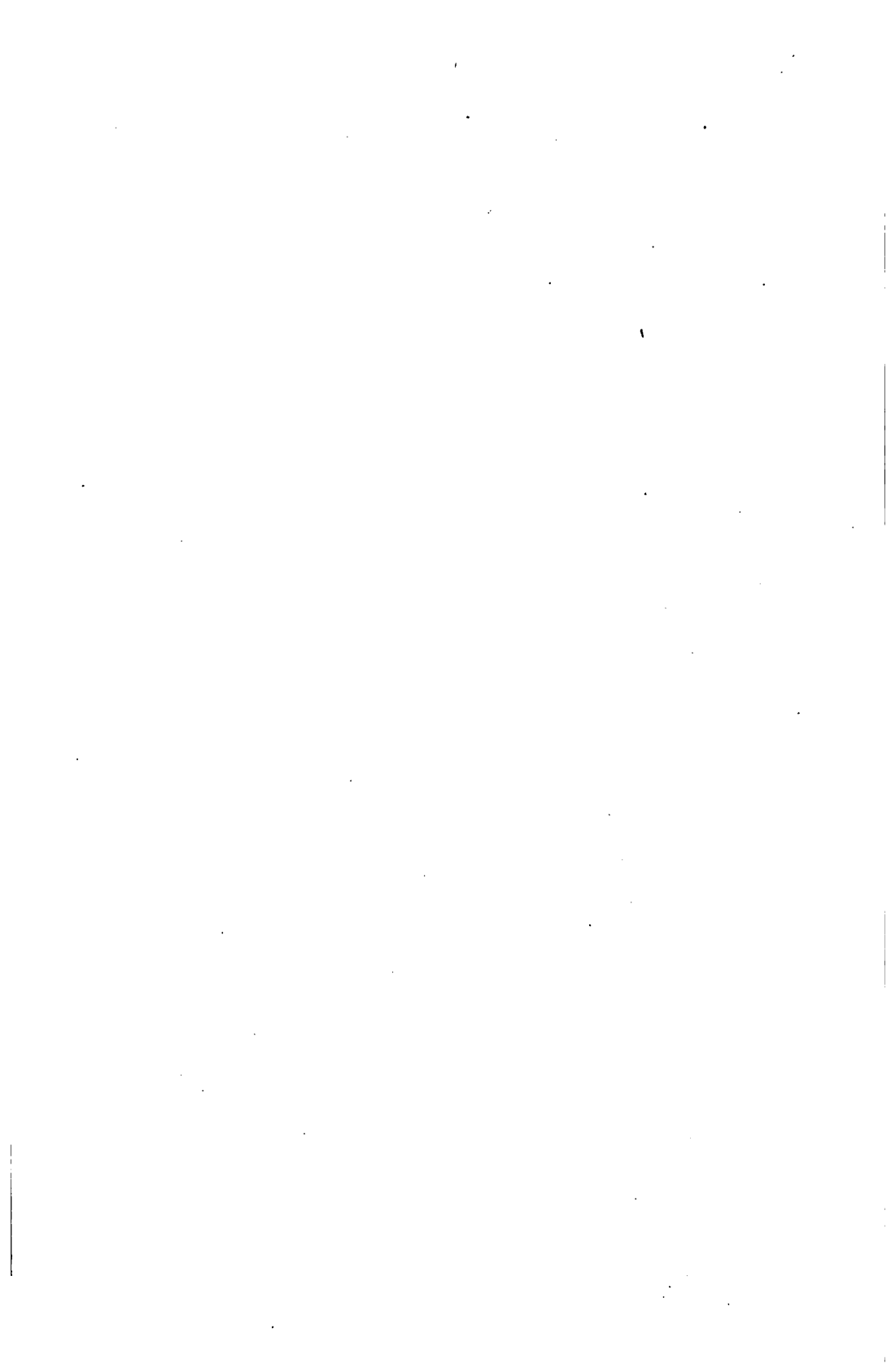
Semper honos, nomenque tuum, laudesque manebunt.

VIRG.

It is written in the true spirit of prophecy, and from a late declaration of a learned and noble Judge, (no less distinguished for his impartial and independent spirit, than for his great zeal and earnestness for Justice) the Editor very sincerely hopes Mr. Surrebutter's prophecy will be shortly fulfilled.

END OF THE FIRST BOOK.

THE
PLEADER'S GUIDE.
BOOK II.



SYLLABUS
OF
MR. SURREBUTTER'S
PROFESSIONAL LECTURES.

BOOK II.

LECTURE I.

Mr. S. having finished the process of a suit at law, opens the present discourse with the pleadings, containing a poetical explanation of the composition and structure of the record, from the process to the postea; illustrated with professional traits of the character of the late Thomas Tewkesbury, Esq., special pleader, with some account of his death.

LECTURE II.

On the absurdity of legal Innovations—Of References and Arbitrations—A Justice of Peace—His Judicial Consequence in the eye of the Law—The great advantages resulting from the multiplication of Law Offices, and the Perplexity of legal Proceedings.

LECTURE III.

On Misprisions in Practice, contrasted with the Professional Exploits, and exemplary Conduct of Messrs. Hawk, Shark and other distinguished characters. |

LECTURE IV.

A short Digression, containing a distant Prospect—
Mr. S. resumes the plan of his Lectures—His Instructions for forming the complete Orator at the Bar—
Making a Motion in Court—Addressing a Jury, &c.

LECTURE V.

Of Dress and Action in Speaking—Of Ore Tenus Examination, and the best and most approved method of extracting Truth from Evidence.

LECTURE VI.

Instructions continued and illustrated by the examples of Mr. Counsellor Bother'nm and Mr. Counsellor Bore'um, introductory to the Trial of Trespass in Assault and Battery at a late contested Election.

LECTURE VII.

The Trial, as taken by an eminent short-hand writer.

JOHN-A-GULL,

at st.

JOHN-A-GUDGEON.

} In Trespass.

For the Plaintiff, Mr. Counsellor Bother'um ; for the Defendant, Mr. Counsellor Bore'um—Mr. Bother'um, opens the Pleadings—His Speech at length.

LECTURE VIII.

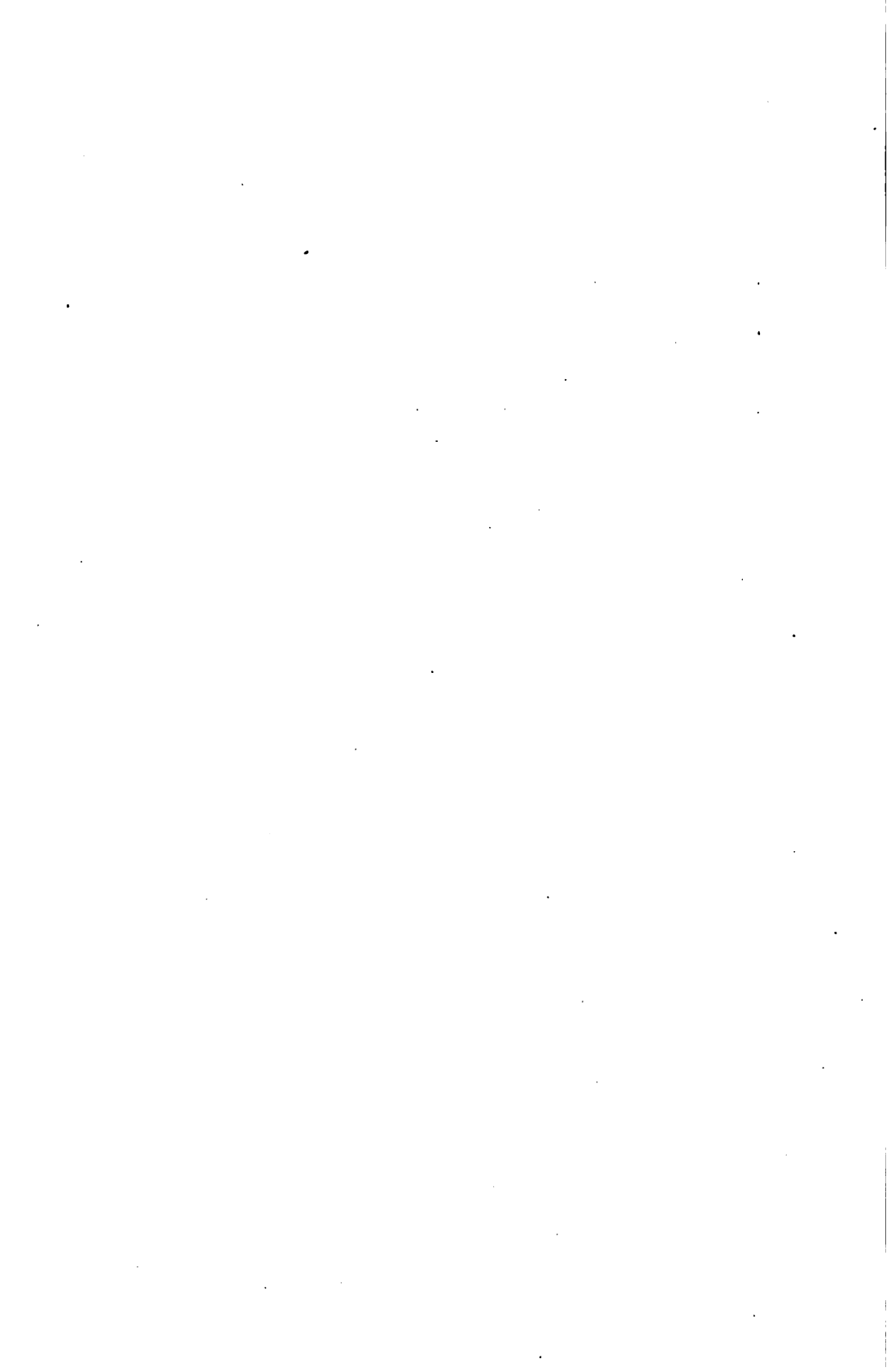
Examination of witnesses for the Plaintiff—Mr. Simon Trout, dissenting Preacher and Schoolmaster, examined by Mr. Bother'um—Cross-examined by Mr. Bore'um—Evidence of Dr. Tench, Surgeon and Apothecary.

LECTURE IX.

Trial continued—Examination of Farmer Chubb, by Mr. Bother'um—Cross-examined by Mr. Bore'um—Conclusion of the evidence for the Plaintiff.

LECTURE X.

The Defendant's Case—Mr. Bore'um's Speech—Interrupted by Mr. Bother'um—His Law Argument—Cites Cases—Answered by Mr. Bore'um—Conclusion of Mr. Bore'um's Speech, and of the arguments on both sides—End of the 10th Lecture of the 2nd Book, and the last of the Pleader's Guide.



THE
Pleader's Guide.

BOOK II.

LECTURE I.

Mr. S. having finished the process of a suit at law, opens the present discourse with the pleadings, containing a poetical explanation of the composition and structure of the Record, from the process to the postea, illustrated with professional traits of the character of the late Thomas Tewkesbury, Esq., Special Pleader, with some account of his death.

Then once more, O ye Pleaders, and once more
Ye plodding clerks, with fingers never weary,
I come your pleas and pleadings to explore,
And thro' the confines of your cloysters dreary
Following the process 'bove th' Aonian steep,
I have presum'd with inky thumbs to sweep
The¹ golden lyre; nor yet the more have ^aceas'd
To greet ² St. Michael the Archangel's feast,
Nor still sometimes upon ³ St. Martin's morn
Thro' Inner and thro' Middle Temple borne,

————— Yet not the more
Cease I to wander where the Muses haunt
Clear spring, or shady grove, &c.

Thro' inner and thro' middle darkness borne.

MILTON.

(While yet detain'd in that obscure resort)
 Cease I to roam thro' '4 Elm, or Garden Court,
 Fig-Tree, or Fountain Side, or learned shade
 Of King's-Bench Walks, by pleadings vocal
 made—

Thrice hallow'd shades! where slip-shod
 benchers muse,

¹*Golden lyre*—Sir John Frotescue observes, “that the University of the Laws (for he so calls the Inns of Court and Chancery) did not only study the laws to serve the Courts of Justice, but did further learn to *dance and to sing, and to play on instruments* on the Ferial days.” *Dudg. Orig. Juridic. c. 55. Fortescue de Laud Leg. Ang. c. 49.* Mr. S. seems to have acted up to the spirit of the original institution, see the Memoirs of his Professional career, *Bk. 1 Lect. 7.*

²*St. Michael the Archangel*—The Law Terms respectively derive their names from the festivals of the Church, immediately preceding their commencement. Michaelmas Term originally commenced in eight days after the feast of Saint Michael inclusive, *Octabus St. Michaelis*; but by the joint operation of two Acts of Parliament, and the alteration of Style, it has in effect been procrastinated, so as not to commence before the 6th of November.

³*Saint Martin—Crastino St. Martini*, “the morrow of St. Martin,” the 12th day of November, formerly the fourth, now the second return day of Michaelmas Term.

Attorneys haunt, and special pleaders
cruise!—

Melodious as Apollo's lute
Is the soft language of a suit,
The *writ*, how sweet! the *declaration*,
The *double plea*, the *replication*!
Persuasive as the accents sweet,
Which captive held the Grecian fleet,
Or his, that vocal Bard of Thrace
Whose music tam'd a savage race:
Replete with all the beauties chaste
Of Attic and Augustan taste:
The which do most in ancient writ
Delight to live, *videlicet*——

“⁵ George * * * *

To the shreive of * * * * greeting,

“Whereas, John Doe himself secreting,

“Your bailiwick runs up and down,

“We do command you thereupon

⁴ *Elm or Garden Court*—“The Inns of Court were
“placed out of the City and noise thereof in the suburbs
of London. “*Seorsum parumper in Civitatis suburbio.*”
Fortesc. The several courts in the Temple, have been
erected at different periods upon the site of the gardens
and pleasure grounds, belonging to the *hostel* or *domus*
mansionalis of the temple.

⁵ *George &c.*—The sketch of an *alias latitat* is here
given, *e. g.* but for the praise of the admirable writ, the
the extent of its powers, &c., &c., see *ante*, Book 1, *Lect.* 5.
and notes.

*"(Sicut a'ias) that you bring
 "His body 'fore our Lord the King,
 "And have you this writ then and there,
 "Witness L. K. at Westminster."*

Now, 'tis not every one can see
 That beautiful simplicity,
 Which in this ⁶*precept* meets the ear,
 So forcible, distinct, and clear,
 And gives beyond the reach of art
 Such strong emotions to the heart,—
 These magic forms of writs and entries,
 Still charm the shades of Coke and Ventris :
 No harsh, no unharmonious sound
 Is in the record to be found :
 Fiction is ours, and fancy too,
 Imagination ever new,
 And many a quirk, and many a bout
 "Of linked sweetness long drawn out."
 "With wanton heed and giddy cunning,"
 The half-drown'd sense thro' mazes running
 Of varied *counts*, whose forms supply
 Fresh food for jocularly :
 But what with more substantial charms
 Our spirits cheers, our genius warms,

⁶ *Precept*—The Writs directed to the Sheriff are legally termed *precepts*, from their operative word *præcipimus*, "we do command you."

To aid us in our legal toils,
We claim the hero's glittering spoils ;
Ours is the meed, which all must pay,
Whether they win, or loose the day :
"In lively portraiture display'd,"
And gently on our tables laid,
We view the countenances bright
Of kings and queens ; a goodly sight!
Which even Jacobins adore,
Impress'd upon the golden ore ;
O may they oft in bright array
On me their gracious smiles display!
Oft may their precious forms unite
Meet emblems of the sovereign's right,
At once t' inspirit and surprise,
To dazzle and enchant mine eyes ;
With music charm my ravish'd ears,
Harmonious as the vocal spheres,
And join like cymbals when they meet
In joyful chinks and numbers sweet!—
Inspir'd with images like these
Old ' Tewkesbury perus'd his pleas,
Tho' his I deem'd an inspiration,
Which savour'd much of fascination,

¹ *Tewkesbury*—The late Thomas Tewkesury, Esq., see episode, containing authentic memoirs of the author's professional career. *Book 1. Lect. 7.*

And caus'd such bodily exertion
As gave his friends no small diversion :
For oft I've mark'd him when he chose
Special demurrers to compose,
With genuine old black letter fraught,
Grow quite transported with the thought,
His thumbs he'd mumble to the quick,
His shins against the table kick,
Then give his rueful wig to fly
Athwart the room in ecstasy,
Till clients, and the sound of fees
Arous'd him from his reveries,
And soon as Hawk or Herne appear'd,
He'd rub his hands, and stroke his beard,
Resume his old colloquial turn,
"With how d'ye do good Mr. Herne ?—
"Hah ! Mr. Hawk, is't you, I say.
"And how does Mrs. Hawk, I pray ?
"And all the little Hawks to day ?—
"What news is stirring in the trade ?
"Have all those damages been paid
"By Dr Hemlock, for the kick
"He gave to Dr. Arsenic ?—
"Still quarrelling about their pills,
"Pray have their patients made their wills ?
"How goes the Gull and Gudgeon cause ?
"I see you've got 'em in your claws,
"You've pounc'd 'em, Hawk, you'll pluck
 'em too,—

“Pretty good sport for Herne and you!—
Such parley would his writs restore,
And Tom became himself once more.
Blest sage! who could his mind unbend,
Yet had a soul to comprehend
Those subtile mysteries sublime,
Snatch'd from the mould'ring hand of time
By skilful draftsmen to impart
Choice beauties to the pleading art;
He in the twinkling of an eye,
Could all the scatter'd charms descry
Of ^s *horsepleas*, *traverses*, *demurrers*,
Jeofails, *imparlances*, and *errors*.
Averments, *bars*, and *protestandos*,
And *puis d'arreign continuandos*,
Of every *count* and term could tell,
And words of uncouth form compel,
(Such as could ne'er have had existence,
Or met without his kind assistance,)
To keep due pace in declaration,
With studied grace and variation :

^s *Horsepleas*—A description of special pleas adapted to the purposes of delay, whimsically so called, and familiar in practice, adopted in particular cases, as a means of gaining time, and *jockeying* the defendant over the term.

While every man of sense beside him
 Conceiv'd 'twas *aliud et idem*.—
 Alas ! poor Tewkesbury ! the smell
 Of ancient parchment pleas'd thee well !
 But thou art gone ! and may'st thou gain
 That peace thy clients sought in vain :
 'Twas hard no *dilatory plea*,
 Of power to keep the body free,
 Thine issuable term could save ;
 That Clotho no *imparlance* gave,
 Nor would the fates *estop* their task,
 To help thee over ' *Quinden* ' *Pasch* ;
 But seiz'd at once th' abhorred sheers,
 And cut the red-tape of thy years ;
 And still the fatal sisters hold
 The issues of thy life enroll'd,
 Remov'd forever in the last resort
 By *writ of error* into Pluto's Court.
 What mortal sins he had, Tom died assur'd
 Would by the statutes of *jeo-fail* be cur'd,
 And for his virtues of the higher class
 They'd stand recorded in congenial brass :—

' *Quinden* ' *Pasch*.—The 15th day inclusive after
 Easter, being the first Return Day of Easter Term.

So bow'd obedience to fate's just decrees,
But first *craved oyer* of his book of fees ;
Strove to protract each moment as it past,
And talked of *postea*s till he breath'd his last.

LECTURE. II.

On the absurdity of legal innovations—A Justice of the Peace—his judicial consequence in the eye of the law—The great advantages resulting from the multiplication of law offices, and the perplexity of legal proceedings.

Wise was the man who first projected
The lever, and its use directed,
And bold th' adventrous engineer
Who swore he would the earth unsphere,
And move the firmament to boot,
Give him but where to set his foot.—
Yet will I hold a lawyer fee'd is
Ablar by far than Archimedes,
Give him a *writ*, a *capias* put in,
Or *latitat* by way of footing,
And on the credit of a bard
He'll move the devil afterward :
Yet there are lawyers to be found
For learning and for worth renown'd,

Who by a summary proceeding
Wish to abate all special pleading,
Join general issue, and dispense
The special facts in evidence,
Or bring the parties to accord
By arbitration or award;
This doctrine too, without *demurring*,
Their clients might perhaps concur in,
And since a more compendious way
So far exceeds the law's delay,
Might beg some justice of the quorum,
At once to lay the law before 'em;
And thus all matters of account,
Whate'er their nature and amount,
All *actions on the case, in trover*,
Detinue, or in *debt*, make over
To some grave magistrate, of sense
Of knowledge, weight, and consequence,
Who of his *dedimus* possest
As one with inspiration blest,
Enjoys the happiest transition
From ignorance, to erudition,
And with no other stock in trade
Than testament on table laid,
With acts 'gainst tunneling and snaring,
And John the evidence to swear in;
John Groom, who leaves his worship's horse
Unfed, to put the laws in force,

And three old folios on a shelf,
A court of record is himself.—
Alas ! how little do they know
What blessings from confusion flow !
What a revenue to the state
Error and ignorance create,
By what we lawyers most abound in,
The art of puzzling and confounding !
From ignorance a pleader gains
Fresh matter to employ his brains,
Errors on errors rise, and thus
As doctors say, *pus creat pus*,
One suit another suit succeeds,
And damage upon damage breeds ;
If law is as a rule of right,
And all things must be measured by 't,
There must be lawyers to provide it,
And some to move and some to guide it ;
Item, there must be stock or stone,
Or senseless block to work upon,
A rule of action, unemploy'd,
Had better far be null and void,
But law, like Nature, to sustain
Her system, never acts in vain,
Tho' all that system may comprise,
Is dimly seen by vulgar eyes ;
Observe the animal creation
Each class in due subordination,

What nice dependencies ¹ you see in
The chain of Universal Being,
From elephant of Bisnagar,
Who bears its armed hosts to war,
Down to the noxious worm that feeds
On slime, and in corruption breeds.
Howe'er imperfect human sight,
All knowledge partial and finite,
This truth-still vibrates on the chain
That nature never acts in vain—
Fowls of the air, and beasts, like men
Prey, and are prey'd upon again;
And if the lower class expire,
Their loss proves fatal to the higher—
Mark thus in Law the nice gradations
Of useful posts and occupations,
Of all, for money who engage in't,
From Buzzard to the meanest agent,

¹ Though less known to fame than his great predecessor Pope, our poet seems to have drawn inspiration from the same source. See Essay on Man, Epistle I. The striking likeness, both of thought and expression, can not fail to attract the notice of even the uncritical reader.

All labour in their just vocation,
And each, by kind procrastination,
As one good turn deserves another,
Multiplies business for his brother.



LECTURE III.

On Misprisions in practice, contrasted with the professional exploits and exemplary conduct of Messrs. Hawk, Shark and other distinguished characters.

Then woe to him who would devise
Pacific schemes of compromise;
Perish the man who dares control
That generous ardor of the soul,
That noble, that ingenuous heat
Which prompts the truly brave and great,
To seek an adversary's ruin,
Tho' purchas'd by his own undoing.
May the fat weed of Lethe shed
Its dullness o'er his recreant head,
Whoe'er has wilfully suppress
That passion in his client's breast;
May he in self-condemning mood,
For lack of more substantial food
Eat his own soul; as erst we find
Th' ill-fated son of Glaucus din'd;
Give him of hellebore to drink;—
Wash him in steep-down gulphs of ink;
Immerge him till he cries for quarter,
And pound him in a ¹ Turkish mortar.—
Oh ! that such false and foolish pride,
Should a man's genius so bestride,

Arrest his faculties, and mar
Their action, like a plea in bar !
Is it not marvellous, dear Job,
So many of the learned robe,
Should all those thriving arts despise,
By which more ardent spirits rise,
And court, to their own interest blind,
The empty praises of mankind ?
Sure there's a lack of sound discretion,
In every branch of the profession ;
A plague upon all squeamish pleaders,
Proud juniors, and fastidious leaders,
Humane attorneys, and all those
Who seek a quarrel to compose,
Which ably manag'd, and well nourish'd,
Might soon have taken root and flourish'd,
And where old Buzzard would have flung
Cart loads of good and rotten dung,
They wilfully pluck up the roots.

¹ *Turkish mortar*—Extraordinary as it may appear, it is a fact not to be doubted, that the lawyers in Turkey when sentenced to capital punishment, have the privilege of being pounded to death in a mortar. Baron de Tott in his memoirs, records an event that happened during his residence at Constantinople, which occasioned the pestles and mortars to be dug up, by the order of Sultan

Young suckers, and old stumps of suits,
Which, forc'd in Chancery or th' Exchequer,
To make them vegetate the quicker,
Might have produc'd by such circuitry,
Fruit equal to a good annuity,
Choice golden fruit, of taste most rare,
In form as palpable and fair,
As that which to the trees attach'd
Of Hesperus hung dragon-watch'd,
Or that fair fruit so sweet of savour,
Which Eve complain'd the Serpent gave her,
Or fairer still from India brought,
And oft with no less evil fraught,
Which, fill'd with most delicious juices,
The fam'd pagoda-tree produces.—
But are such lawyers sound and staunch,
Who grub a cause up root and branch,
And have the conscience to restrain
Law-charges, covin, and chicane !
Nay sacrifice their time and ease,
Then wilfully return their fees !
Are these true orthodox attornies ?
Are they such men as Hawk or Herne is ?

Osman, for the purpose of pounding the refractory lawyers to death. "This order the Baron adds, had the desired effect, and the body of Ulemats were all submission." Bar. de Tott Memoirs, vol 1.

Have they that truly *qui tam* spirit
Which animates my friend Joe Ferret?
Range they in any competition
With men of Mr. Shark's condition?—
All my professional connexion
I owe to Mr. Shark's protection,
He, (while on special-pleading bent
To Tewkesbury's I daily went)
Gave me a general invitation
To write for him the long vacation,
T'was kind, 'twas handsome, I confess,
I took it, I could do no less,
And never was there known a tutor
In business abler and acuter;
'Tis not enough, says he, you're willing
For ev'ry sheet to take a shilling,
There's no small virtue you'll discern in
That wholesome branch of useful learning,
By which his cash a pleader touches,
And gets the cause within his clutches,
He wish'd, he said to see me grounded,
And as with clients he abounded,
I went, I wrote, and without scruple
Became his extra-clerk, or pupil;
And pardon me, ye men of pensions,
And patents for your rare inventions,
If without boasting I declare
That during my manœuvres there,

More paper I besmear'd with law,
Than ever you can make with straw,
Or can by chemic art obtain
Its native purity again.
Ye Gods! what parchment did I soil,
What loads of sheepskins did I spoil!
More, than if fairly put together,
And turn'd by contract into leather,
In drums and breeches would sustain
The labours of a whole campaign.
Tho' not a man of much black letter,
Shark knew the world, Job, no man better;
'Twas a surprise to all who knew him,
And no small consolation to him,
To think how many fools he made,
What service he had done the trade;
He set together by the ears
Squires, parsons, baronets and peers;
And once he made twa Scottish lairds
Quarrel and pull each other's beards,
Tho' twa such lairds are seldom found
To quarrel much on English ground,
Still did he fan the vengeful fire,
Urge and exasperate their ire;
With writs of error and appeals
He goaded these relentless chiefs,
And made each combatant sustain
The conflict like a valiant Thane,

Gave each his parchment shield,—“*then on,*
McDuff,
And damn'd be he who first cries, Hold, Enough!”



LECTURE IV.

A short digression, containing a distant prospect—Mr. S. resumes the plan of his lectures—His instructions for forming the complete orator at the bar—Making a motion in court—Justifying bail—Addressing a jury, etc.

Alas ! what ills await the students
Who seek to thrive by jurisprudence !
How oft the youth, long doom'd to toil,
And cultivate that stubborn soil,
With no kind hand to lead him forth,
And patronize his modest worth,
Sees his neglected merits fade,
And moulders in the cloister'd shade;
Doom'd in obscurity to pine
Without such friendly aid as mine !
How many geniuses are crost,
Or 'midst a crowd of idlers lost,
Are hunting all their lives to find
That knowledge they have left behind !
How many rising men he'll view
(Whom in their humbler days he knew)
Who since my lectures first appear'd,
Successfully their course have steer'd;
Who've learn'd, dear Job, and practis'd too,

Those lessons which I meant for you!—
While he, with wind in hypochonder,
Ready to burst his ribs asunder,
Forlorn in smoky chambers sits,
And reads, and sleeps, and spouts by fits,
And fancies every dun who knocks
Is slipping fees into his box,
Yet fondly hopes to reap at last
The fruits of all his labours past;
Waiting the tedious consummation
Of twice ten winters' lucubration,
When for his light and summer reading,
And for a trifle, he might tread in
The flow'ry paths of special pleading!
Alas! how long his pocket grows!
He cruises oft at Will's ¹ or Joe's,
And oft, as many a greater man does,
Eats, drinks, and falls asleep at Nando's,
Then dreams he that some point he's mooting

¹ These were famous coffee houses in London at the end of the last century and were much frequented by poets, authors, wits and men about town. Nando's was the favorite resort of lawyers, and Thurlow, then at the bar, owed his retainer in the celebrated case of *Douglas. v. the Duke of Hamilton* to some remarks dropped by him in conversation at this resort.

And with the learned Hill disputing,
And tho' for conquest vainly hoping,
When with that vet'ran serjeant coping,
The fame of so renown'd a foe
Consoles him in his overthrow,
E'en by defeat he seems a gainer,
Thinks Buzzard brings him a retainer,
And briefs and clients without number,
Attend him in his golden slumber;
Anon he'll dream that he embraces
Gold chains, portcullises and maces,
Then with a tough beef steak opprest,
Fancy the seals are on his breast;
He sees the demon o'er him lower,
The incubus of state and power,
And vainly struggles to get free
From all his weight of dignity;
Till chance some noisy politician,
Some hungry quack, turn'd state-physician,
Thersites-like from spleen and hate,
Arraigning all who rule the state,
With loud harangue effects his cure,
And wakes him from *peine fort et dure*.²

² " *Peine fort et dure*"—The penalty for standing mute in old time. *Peine* is supposed to be a corruption of *Prisone*, and so it is called in Stat. 3d Ed. 1, c. 12, which speaks of this punishment as part of the common

For thee, dear Job, the stars design
Thy genius at the bar to shine,
There in full splendour to appear,
And light the western hemisphere,
Or in a blaze at once break forth
T'illumine the region of the North;
Already do I see thee there
In brightness like the greater bear,
The Star of Arcady, that rises
And flames at sessions and assizes,
Nor will those laurels fail to shed
Their verdant honors o'er your head,
Which you so late for ³ wrangling famous,

law of the land. It seems to have consisted in laying the criminal on his bare back upon the bare floor, and placing a weight of iron upon his body, to be gradually increased till he pleaded, or as some say, till he expired. But for the honor of the laws enacted during the gracious Reign of his present Majesty, (*Act 12, G. 3. c.20.*) it is in effect abrogated. By this statute, a criminal wilfully standing mute, or refusing to answer directly to the offence, shall be proceeded against in the same manner, as if he had voluntarily confessed, or been duly and regularly convicted.

³ "*Wrangling*"—It will be unnecessary to remark to the classical reader, that the academical honors, derived to the students, who are candidates for the degrees of Batchelor of Arts in the University of Cambridge, are

Transplanted from the banks of Camus;
 If to the logic of the schools
 You join a special pleader's rules,
 And then to Westminster resort,
 And take a few short notes in court,
 Sit snug behind some fat attorney
 And make a friend of Mr. ⁴ Gurney,
 You'll gain, in time, your share of praise
 For arguments on ⁵ paper days,
 And much improve your legal notions,
 By th' art of wrangling upon motions,
 Lamenting much your client's hardship—
 "My Lord, I humbly move your Lordship—
 "Rule to show cause, my Lord, we crave it,
 "Upon a special affidavit.—
 "We move to quash, in your discretion,
 "An order of a special session,
 "Sign'd by five aldermen at least,

classed, and the several graduates dignified, by the appellation of senior or junior wranglers, senior optime's and junior optime's, according to the degree of learning and ability they have displayed in disputing or wrangling upon their Examinations in the public schools.

⁴ *Mr. Gurney*—A very eminent and ingenious shorthand writer.

⁵ "*Paper Days*."—Days in each term appropriated to the hearing of arguments on cases reserved, and

“ Just after an election feast.—
“ Order in bastardy, my Lard,
“ Case not appeal’d, and doubly hard,
“ Twins—and the aldermen who sat
“ Exceedingly intaxicate—
“ Nor on these grounds we rest alone,
“ My Lard it plainly can be shown
“ That neither county, place, nor year,
“ In which the parties liv’d, appear,
“ Nor the least mention where they met
“ Said child or children to beget ;
“ My Lard the order is not dated,
“ Nor any filiation stated—
“ No mention of the childrens sex,—
“ All which are radical defects ;
“ And as we deem the case aforesaid
“ So clear that nothing need be more said,
“ Perhaps, my Lard, you’ll aid our suit,
“ And grant us a rule absolute.”
Now Job, this manner of addressing
Is so polite and prepossessing,

issues in Law upon special pleadings. They are probably so called from the paper books containing these issues, which are previously delivered to the judges by the clerk of the papers, whose office it is to prepare them in the form prescribed by the standing orders of the court. *Pasch.* 18 *Car.* 2. 2 *Litt. Abridg.* 268.

So wonderfully well connected,
Plain, elegant, and unaffected,
I recommend the same to you,
For making a genteel debut.
Nor less the passions you will move,
In justifyng bail above,
Whene'er you work the swindling crew,
Or catechise the hireling Jew,
Him to bamboozle with success,
With smiles accost, and soft address,
And e'er with questions you confound him,
With irony come gently round him,
His fashionable whiskers note,
His rings of paste, and tarnished coat ;
And compliment, with due derision,
All members of the circumcision,
Then strain each nerve, use all your might,
To stultify the Israelite ;
But if too wise to be o'ertaken,
Well knowing how to save his bacon,
In vain old Smouch you have turmoil'd,
And find yourself completely foil'd,
Then take the ground you went before,
And strive to be jocose once more,
Not overbearing, loud, and coarse,
Like Bore'um, bawling till he's hoarse,
Who like an irritated bison,
The roughness of his tounge relies on,
But more in Mr. Both'rum's style

Of poignant and facetious bile,
Who, tho' long-winded, in the main
Exhibits oft a comic vein,
And when his adversary presses
In motions circular progresses,
Resembling much the wise Stinkvinzen,
Who perseveres until he ends in
The very point that he begins in;
The Carolina skunk, who pushes
His head into the briers and bushes,
And when he can no further go,
Scatters his perfume on the foe ;
Such genuine wit will oft prevail,
When serious disputations fail,
Will make e'en special juries smile,
Will oft convince, sometimes beguile,
And force to ludicrous grimaces
Twelve men of grave judicial faces,
Whom counsel, greatly to their praise,
Lead thro' the law's bewild'ring maze,
Perplex'd in classical confusion
Of flow'r, trope, figure and allusion;
Till in a fog they gaping stand,
Like mariners in Newfoundland,
Or pigs, who're wont, in hazy weather,
To grunt and lay their heads together;
Distrust and doubt, and wild surmise
Alternate in each bosom rise,
And even o'er the Foreman's brains

Cimmerian night, and ⁶ chaos reigns.

⁶“ *Chaos reigns* ”

—————Chaos umpire sits,
And by decision more embroils the fray
By which he reigns ; next him, high arbiter
Chance governs all.—*Milt. Par. Lost, Book 2, 907.*

LECTURE V.

Of dress and action in speaking—Of *ore tenus* examination, and the best and most approved method of extracting truth from evidence.

'Tis strange, Dear Job, among the rules
Of tutors, in the ancient schools
For rhetoric renown'd, nor less
For judgment in their pupils dress,
Tho' some have learnedly laid down
The pattern of a pleader's gown,
No common lawyer or civilian,
Not even Tully, or Quintilian,
One single syllable have said
Touching the dressing of his head.—
A science, tho' in former ages
Unknown to orators and sages,
In these politer days we find
One great employment of mankind,
And since, while fashion bears the sway,
Your head its dictates must obey,
Must run thro' scratches, crops and queues,
Of questionable shapes and hues,
And after all its changes past,
In grizzle-wig must end at last;

I think, dear Job, upon the whole,
'Twere best at once to shave your poll,
Lest while the wordy war is raging,
And you the foe with warmth engaging,
That grizzle we may chance to see
Revolting from a black toupee,
And when too forward 'tis inclin'd,
A pig-tail sticking out behind:
Be you in other guise array'd,
Your tie-wig decently display'd,
And when before the bench you stand,
Words apt, fit weapons at command,
Altho' the gods, as well you know,
On you such wond'rous gifts bestow!
A face so fortified with brass,
I trust it would my own surpass,
And voice which envy must admire,
And own that you excel the crier!
At first, with accent mild and meek,
And looks that diffidence bespeak,
With modest air and timid hand
Hold up your brief, and stroke your band,
For modesty, whose gentle mien,
If haply at the bar she's seen,
The court with that respect will treat
Which strangers may expect to meet,
But when grown warm in your narration,
Proceed to loud vociferation,
Strong phrase, and bold gesticulation;

Then like a prisoner from the bilboes,
Stretch out your legs, your arms and elbows,
Till you manœuvre them at length,
With all the spirit, ease and strength,
Of some young hero, first essaying
The noble art of cudgel-playing,
Or fugelman, an active part
Performing in the tactic art;
Flourish your brief, look boldly round,
And stamp your foot against the ground,
Then smack your forehead, and your thighs,
Like one that's bit by gnats or flies,
And so go thro' your exercise :
For when a counsel tells his story,
As Tully says, *de oratore*,
Arms, legs, and thighs, must play their part,
And aid the rhetorician's art ;
Action must all his words enforce,
And make his body hold discourse.
As nothing props a rotten case
Like strength of lungs, save pow'r of face,
I ask no wart so near my nose,
Or scraggy neck like Cicero's,
Or some provincial's face I've seen,
Gaunt, oblong, ossified and lean ;
Grant me, ye Gods, for pleading causes,
Some breadth of cheek, some depth of fauces,
A strength and dignity of feature,

Something I can't express in metre,
That cheerful confidence of visage
Which gives of wit and sense a presage :
Whene'er a counsel's pinch'd and prest,
Much will depend on width of chest,
The strength and tone of th' epiglottis,
And state in which his learned throat is ;
For if 'tis true, as I conjecture,
(And hinted in a former lecture,)
That process is a lever, pleading
Is some mechanical proceeding,
Combining somewhat of the screw,
The pulley, and the lever too,
By which great advocates compel
Truth from the bottom of her well,
And drag her by her dripping locks,
Disguis'd into the jury box :
While judges yawn, and patient sit
To hear th' encounters of their wit ;
For wit, although the lot of few,
All counsel think their lawful due,
And when it fails, as wit is wont,
When too much labour's us'd upon't ;
A witness ever and anon
Serves like a hone to whet it on,
Or like a but is fix'd and shot at,
That truth the better may be got at,
Who baffled in the first attack,

Stares like the man in th' almanac,
Perplex'd with problems multifarious,
And pierc'd with darts thro' members various,
Quite down from Aries to Aquarius.



LECTURE VI.

Instructions continued, and illustrated by the examples of Mr. Counsellor Bother'um, and Mr. Counsellor Bore'um, introductory to the trial of trespass in assault and battery at the late contested election.

Job, of all powers that wind, or draw,
And work that great machine the law,
Do thou, my friend, keep most in view
That greatest of all pow'rs, the screw;
The power of screwing and distressing,
By worming, winding and compressing,
Facilitates the extrication
Of truth by cross-examination ;
But no one engine or invention,
Forg'd by the dæmon of contention,
Gives such a purchase in a cause,
Beyond the vigour of the laws,
So governs and upholds unseen
The movements of this vast machine,
As pride, resentment, and ill-blood,
Which from the *ule* or the wood,
Create the matter and foundation,
And subject of all litigation :

What robs of ease and independence,
So many plaintiffs and defendants,
And leaves their purse at our devotion,
To grease and set the wheels in motion?—
Vengeance; that fills th' historic page,
The scourge of ev'ry clime and age,
'Twas wrath, destructive wrath alone,
Steel'd the proud heart of Peleus' son,
Brought to the Greeks a thousand woes,
And sent them to the dogs and crows;
The same fell cause wrought equal dudgeon
'Twixt John-a-Gull and John-a-Gudgeon,
And left them with the like contrition,
Precisely in the same condition:
'Twas wrath and hatred's raging fires,
The breasts of these two harmless squires
To deeds of desperation drove,
And perfected the will of Jove.

Ah! John-a-Gull, thou wretch ill-judging!
And thou, relentless John-a-Gudgeon!
How oft I've heard you in distress,
And bitterness of wrath, confess,
That better far than litigation
Had been the prudent arbitration,
Of one so noted for his candor
And sage advice as Sir John Gander!
An honest prosing knight, who ne'er
Of damages and costs could hear,

(Since first he chanc'd to be cornuted,
His action brought and was nonsuited,)
But with a shrewdness, seldom seen
In one of Sir John Gander's mien,
Join'd with a confidence and phlegm,¹
Which no sound lawyer will condemn,
The same good story he'd relate
Of that wise prince and potentate,
Peter the Czar,¹ surnam'd the Great,
" Who, when he came to Albion's shore,
" Her arts and manners to explore,
" That dome survey'd with curious eyes,
" Where Rufus caus'd his courts to rise,
" There, when in well-comb'd wigs he saw
" A group of heads, all learn'd in law,
" What are those grizzly forms (he cried)?—
" Lawyers, th' interpreters replied—

¹Allusion is here made to the celebrated visit of Peter the First, Czar of Muscovy to England in 1698, where he spent three months in studying English manners and customs, devoting himself especially to naval affairs. His stately form and singular character, as well as his eccentric personal habits which were little better than barbarian, excited much curiosity and attracted crowds of people to gaze upon him whenever he made his appearance in public.

AMERICAN EDITOR.

“ Lawyers, ! that never can be true—
“ In all my realms I have but two,
“ And to those realms, should Heav’n once
 more
“ Vouchsafe their monarch to restore,
“ One I shall soon ” — — but what the
 Czar meant,

Whether to rise him to perferment,
Or *sus. per col.* was his intention,
This worthy knight forbore to mention,
Save what by gestures he exprest,
And left his friends to guess the rest.

For you, whose heads by fate accurst,
Some friend infatuated first,
Long are you destin’d to repent
That hour into those courts you went,
Alas ! full often have your spouses
Foretold the ruin of your houses,
With sighs, and tears, and empty purses,
Wail’d your successes and reverses ;
Nor spar’d some pretty keen reproaches,
Riding in gigs instead of coaches ;
“ This plaguy lawsuit on our backs,
“ Is heavier than the income tax ;
“ Sure law was made to be th’ undoer
“ Of just such nincompoops as you are !
“ For one must needs to Ferret go,
“ T’other to Cormorant, and Crow,”
“ All of the true rapacious breed,

“ As ever a poor client flay'd,
“ Who never yet deserv'd a curse
“ For sparing a rich client's purse,
“ But make his case so much their own,
“ They'll pluck and pick him to the bone,
“ And see him thoroughly dissected,
“ Rather than have his plea rejected,
“ Or cause for want of cash neglected.

Dear Job, this legendary strain
Saves authors much fatigue of brain,
In hunting o'er Parnassian ground
For phrases better miss'd than found.
I ne'er in epic or in ode
The muse's fiery courser rode,
Was ne'er ambitious to be seen
Near that same horsepond Hippocrene ;
I ask no forked hill to dream on,
No aid from Deity or Dæmon,
Instead of Hæmus or Sperchius,
“ Give me a brief at nisi-prius”—
The only aid that I require, is
The aid of juries, and venires,
Unless 'twere possible to choose
Some iron-tongu'd, long-winded muse ;
If such there be, whose lungs would reach
The length of Mr. Bore'un's speech,
And lift my numbers to th' extent
And height of Both'rum's argument,
Oh ! had you heard the Gudgeon cause,

And number'd all the hems and haws,
With all those arguments that I did,
Which left the conflict undecided,
You ne'er had thought 'twas Mr. Bore'um,
Or Both'rum, who drove all before 'em,
But two great orators had come
Express from ancient Greece or Rome,
Or Laertiades had stood
With Ajax near Scamander's flood,
To plead for Homer, and dispute
Troy's bounds in an ejectment suit,
'Gainst worth and learning's favorite client,
The venerable Jacob Bryant:
That Nemesis herself had breath'd
Thro' Both'rum's windpipe copper sheath'd,
Or Wildman's bees had reappear'd,
And settled upon Bore'um's beard,
And left upon his mouth of leather
Their honey and their stings together;
For thus, quick rising on the plaintiff's side,
The deep-ton'd Both'rum spoke, and
Bore'um slow replied.

LECTURE VII.

The trial, as taken by an eminent short-hand writer.

JOHN-A-GULL	}	In Trespass.
at st.		
JOHN-A-GUDGEON.		

For the plaintiff, Mr. Counsellor Bother'um.—For the defendant, Mr. Counsellor Bore'um.—Mr. Bother'um opens the pleadings—His speech at length.

I rise with pleasure, I assure ye,
 With transport to accost a jury,
 Of your known conscientious feeling,
 Candor, and honorable dealing,
 From ¹Middlesex discreetly chosen,
 A worthy and an upright dozen. (aside.)
 This action, Gentlemen, is brought
 By John-a-Gudgeon for a tort,
 The pleadings state, “that John-a-Gull
 With envy, wrath and malice full,

¹ “*Middlesex*”—This being an election affray, the venue is supposed to have been changed upon the usual affidavit, for the sake of a more fair and impartial trial before a Middlesex jury.

With swords, knives, sticks, staves, fist and
bludgeon,
Beat, bruise'd and wounded John-a-Gudgeon,
First count's "for that" with divers jugs,
To wit, twelve pots, twelve cups, twelve mugs,
Of certain vulgar drinks called toddy,
Said Gull did sluice said Gudgeon's body;
The second count's, for other toddy,
Cast, flung or hurl'd on Gudgeon's body;
To wit, his gold-lac'd hat and hair on,
And clothes which he had there and then on;
To wit, twelve jackets, twelve surtouts,
Twelve pantaloons, twelve pairs of boots,
Which did thereby much discompose
Said Gudgeon's mouth, eyes, ears and nose,
Back, belly, neck, thighs, feet and toes,
By which, and other wrongs unheard of,
His clothes were spoil'd, and life despair'd of,
To all these counts the plea I find,
Is *son assault*, and issue's join'd—
Such, Gentlemen, is word for word
The story told on this record.—
This fray was at a feast or revel,
At Toadland, on the Bedford Level,
Giv'n, as was usual at elections,
By Gudgeon to his fen-connections;
They'd had a meeting at the Swan
The day before the poll began,
And thence adjoun'd it to make merry

With Mr. Coot, who keeps the ferry.
Now Gull, who always thrusts his nose,
Wherever John-a-Gudgeon goes,
To this same feast without suspicion,
Unask'd, it seems, had gain'd admission ;
Coot had just finish'd an oration,
And Gudgeon, with much approbation,
Was singing an election ballad,
Penn'd by th' ingenious Dr. Mallard,
(That orthodox and learned writer,
Who bids so fairly for a mitre ;)
When Gull, who heard this song or sonnet,
With Mr. Gudgeon's comments on it,
This Gull, (whose very name denoted
The character for whom he voted)
Flourish'd his knuckles in derision,
And with much promptness of decision,
Began to pummel and belabor
The short ribs of his peaceful neighbor,
But first with tweaks assail'd his nose,
And interspers'd said tweaks with blows ;
Gudgeon explain'd, and Gull recourse had
To other tweak like tweak aforesaid—
G—d knows, a milder, gentler creature
Never was seen in human nature,
Than the forbearing and well-judging,
Discreet, and gentle John-a-Gudgeon ;
And Gentlemen, there's no man's face is
Better received at all your races,

Wells, mouths, and water-drinking places ;
Was Alderman, and Mayor elect ;
Once had the honor to be prick'd
For Sheriff, which important station
He gain'd without solicitation,—
No doubt his Lordship recognizes
The coat he had on at assizes,
A velveret, genteel and neat.
With tabby lin'd, and frogs complete,
Made for Squire Gudgeon's wedding ball,
When first he came to Webfoot Hall,
An ancient seat in th' Isle of Ely,
Where all the Gudgeons live genteely,—
Which coat so trimm'd, said Gull
Did spoil, besmear, and disannul,
With the most villainous libations
Of the most vile of vile potations ;
For proof, we'll call Gull's worthy friend,
Who keeps a School at Toadland's End,
One Simon Trout, a pious pastor,
And Dr. Tench, who spread the plaster,
And Farmer Chubb, an honest yeoman,
Who speaks the truth and cares for no man,
But above all, to prove our case,
We'll show you Mr. Gudgeon's face,
Where ev'ry injur'd feature pleads
'Gainst John-a-Gull's atrocious deeds,
What facts, what species of excuse,
My Brother Bore'um will produce,

What case he'll make, and how maintain
His plea of *son assauti demesne*,
Wise as he looks, you may relie on't,
He knows no more than his own client ;
'Tis for you, Gentlemen, to say
What damage John-aGull shall pay ;
'Tis in your wisdom, Gentlemen, to pull
So wide the purse-strings of this factious Gull,
That he no more may triumph and parade
The streets of Cambridge in a blue cockade,
Singing the praises of a British jury,
From the pig-market to the petty-cury ;
But back to Toadland as he bends his way,
Whoe'er beholds him to his friend may say,
Mark, how the jury have rever'd the laws,
Giv'n the just judgment in the Gudgeon
cause,
Taught the proud Gull to sing an humbler
strain,
And sent him waddling to his bogs again.

LECTURE VIII.

Examination of Witnesses for the Plaintiff—Mr. Simon Trout, dissenting Preacher, and Schoolmaster, examined by Mr. Bother'um—Cross-examined by Mr. Bore'um—Evidence of Dr. Tench, Surgeon and Apothecary.

Bother. }
whispers }
his Atty. }
Atty.

Pray are our witnesses all here,
 Our scaly friends from Toadland Mere?
 Here's Dr. Tench, and Preacher Trout,
 And Farmer Chubb will come, no doubt,

Bother.

Call Simon Trout—We'll first begin
 With Mr. Trout,—Come swear him in.

Crier.

Here, Simon, you shall—(silence there)
The truth, and all the truth declare,
And nothing but the truth be willing;
To speak, so help you G-d,—(a shilling,)
 Trout's sworn.—

(*Bother.*) Pray Sir, did you attend

Th' election feast at Toadland's End?
 The feast I mean before the poll-day?

Trout.

Yes Sir, I tarried there the whole day,
 Albeit I never go to dinners,
 To feast with publicans and sinners,
 And even it hath been my rule

On no account to quit my school,
 As in my absence, I'm aware
 Satan will not be idle there!
 I own, Sir, I for once transgress'd it,
 The inward light so strongly press'd it,
 A call I never could withstand!
 But touching the affair in hand,
 As it regards the late election,
 I've but a feeble recollection;

Bore. }
aside. }

(Your inward light must fail you greatly,
 If you've forgot what pass'd so lately.—)

Trout.

There was a squabble, and some oaths,
 And liquor spilt on plaintiff's clothes,
 Squire Gudgeon's face was bruis'd, I've heard,
 His Sunday raiment much besmear'd,
 And Dr. Tench inform'd me— —

(*Bore.*) Pooh!—

Dont tell us, Sir, what Tench told you—

Bother.

Stop, Mr. Bore'um, by your leave,—

Bore.

My Lord, I humbly do conceive—

Bother.

These interruptions, I declare,
 Would almost make a parson swear—

Bore.

Do Mr. Bother'um let me speak—

Bother.

Now he's begun he'll talk this week—

Bore.

Well Mr. Trout, so all you know then,
 Is what you've heard of plaintiff's clothing?
 All hear-say is it?—

(*Trout*) No, Sir, no,—

I lifted up my eyes, and lo!

I did behold, in wrath, Squire Gull
Smite Mr. Gudgeon on the skull;
And Dr. Tench, a wise and wary,
And learned Fen-Apothecary,
Doubted he said — —

(*Bore.*) Do stop my friend,

Can not I make you comprehend?—

Bother. Come, Sir, we wont detain you—Gull
You're sure smote Gudgeon on the skull,

Trout. He did. — —

Cross-examined by Mr. Bore'um.

(*Bore.*) Stay, Mr. what-d'ye-call him,

You say you saw Gull bruise and maul him,
Trout Yes.

(*Bore.*) And you never go to dinners,
To feast with publicans and sinners?—
What, was the bludgeon pretty thick?

Trout. I can not say I saw the stick.—

Bore. Stay, Sir, I think that you're a teacher,
A spiritual pastor, and a preacher,
Now recollect you're on your oath, Sir,
Mind you do justice to them both, Sir,
Was there no boxing match?—speak out—
Nothing like fighting, Master Trout?

Trout. Why verily much strife arose,
Divers and sundry kinds of blows,
Much provocation too, albeit,

I was not there at first to see it;
 A song was humm'd, which caus'd dissension,
 And seem'd of heathenish invention,
 Which, tho' it lack'd both wit and keenness,
 Savour'd of malice and uncleanness,
 And, sung with loud vociferation,
 Rous'd the defendant's indignation,
 Who seem'd to think it cast reflections
 On him and all the Gull-connections :
 This song, tho' spiritless, and dull,
 Did sorely trouble Mr. Gull ;
 And oft repeated in his ear,
 Did cause him to blaspheme and swear,
 'Till, God forgive him for't, he rose,
 And seizing on Squire Gudgeon's nose,
 He squeez'd it 'twixt his thumb and finger,
 Stamp't on the song, and d—d the singer ;
 Now when much strife and wrath ensued,
 Both which I always have eschew'd,
 I fled—but soon return'd to pray
 That Heaven would stop this sinful fray,
 And we like brethren might agree,
 And live in peace and unity—

Bother

Swear Dr. Tench—

(*Crier.*) Here, Doctor, look—

Take off your glove, and kiss the book—
 The Doctor's sworn.

(*Bother.*) Good Dr. Tench,

Pray tell the Jury and the Bench,

All that you saw and heard that day—
Tench. Sir, I know nothing of the fray,—
 I was call'd in at the conclusion,
 T' inspect a vertical contusion,
 Gudgeon was then without his shirt,
 His body much besmear'd with dirt;
 There was an ugly awkward cut
 Ran quite athwart the *occiput*,
 He'd have been *comatose*, I'm sure,
 And far beyond my skill to cure,
 Had I been call'd ten minutes later—
 I trembled for the *dura mater* :
 The cuticle, or outward skin,
 Portended something wrong within—
 The *fauces* in a sad condition !
 Betwixt the *nares* no partition !—
 But both so forc'd into conjunction,
 Th' *olfactories* declin'd their function,
 Some teeth were broke, and some were lost ;
 The *incisores* suffer'd most,
 Much mischief done to the *molars*—
 And, what a very strange affair is,
 Not the least symptom could I see
 Of *dentes sapientiæ*.
 In all my *pugilistic cases*,
 At feasts, elections, fairs, and races,
 A worse than this I never met,
 Nor ever saw an instance yet,
 In all that branch of my profession,

Where blows have made so much impression !
 Optics, my Lord, a perfect jelly !
 One large contusion on the belly,
 Two on the *costæ*, and as I guess
 A kick upon the *os coccygis*,
 Had caus'd a tuber, or a bump
 Around the region of the rump.

Bother.

You took some blood, Sir, from him?—

(*Tench*) Plenty—

Phlebotomiz'd him ounces twenty ;
 Order'd in lieu, one ounce, good weight,
Magnesiæ vitriolat :

Subinde gave when faint or sick, sir,

My renovating *fen-elixir*,

Then clapp'd my patent plaster on,

My genuine *ichthupharmacon*. — —

Bother.

Sir of your practice we've no doubt,—

Bore.

So much for *Tench*,—come hand him out.



LECTURE IX.

Trial continued—Examination of Farmer Chubb, by
Mr. Bother'um—Cross-Examined by Mr. Bore'um—
Conclusion of the Evidence for the Plaintiff.

Well, who's your next?

(*Bother.*) Set Farmer Chubb up,
Chubb's recollection I must rub up.
So, Mr. Chubb, I see 'tis you;
You live at Toadland's End?

(*Chubb.*) I do.

Bother. You din'd at the election meeting?

Chubb. Yes, sure I did, I loves good eating.

Bore. Was there a bickering where you sat?

Chubb. No, we had no such dish as that.

Bore. No broil, no bickering, no fracas?

Chubb. No, no such dishes as I saw,
There might be broils for ought I knew,
To please such gentlemen as you.

Bore. Why Chubb, you must have seen at least
These parties at the Toadland feast,
Was any thing by plaintiff said,
Which to such lengths defendant led,
And caus'd an act so indecorous
As that which now appears before us?

- Chubb.* Anan ?
(*Bother.*) Why surely you must know
Whether these men had words or no ?
- Chabb.* Words! aye, they'd words enough, God knows,
Besides some pretty tightish blows.
- Court.* Hark ye, my friend, was Gull d'ye think
Disguis'd, or much inflam'd with drink ?
- Chubb.* Neither—as sober as a judge,
Th'of to be sure he seem'd to grudge,
Being as how his coat was shabby,
Squire Gudgeon's velvet, lin'd with tabby,
But as for drink, my Lord, he chose
To fling all that o'er plaintiff's clothes;
My Lord, I wish to be going,
For 'tis a charming-time for sowing.—
- Bother.* Stay, Mr. Chubb, speak out, Sir, do,
Did Gull beat Gudgeon? is that true?
- Chubb.* Beat him! he beat him black and blue !
I never see'd a prettier fight,
So full of malice like, and spite.
- Bore.* A fight! Ho, ho! the truth's come out,
A fair set-to, a boxing bout?—
- Bother.* And this you positively swear ?
- Chubb.* Aye sure, why Simon Trout was there;
Simon, for all he seems so shy,
Please you my Lord, knows more than I.
- Bother.* How say you? did not Trout advise
'Gainst such unchristian exercise ?
- Chubb.* Yes, after praying and beseeching,

Simon stood up, and fell a preaching,
And like the picture of St. Paul,
Began to sarmonize us all,
Bade us hold fast of what was good—
And well that doctrine understood,
For with the tankard he made bold,
And seem'd main loth to quit his hold.

Bother. What, did he preach, d'ye say, and stand
With this same tankard in his hand ?

Chubb. Aye sure, he first threw back his wig,
And took a pretty handsome swig,
Then held the tankard up to view,
All one as you your brief may do,
Saying, that wicked stuff within
Did cause a multitude of sin.

Bother. Why Chubb, now, on your oath, man, say,
Did not this preaching stop the fray ?

Bore. After this speech of Simon Trout,
Had you, or not, a boxing-bout ?

Chabb Why yes—I scorns to tell a lie,
Trout says to me, as I stood by,
Can'st keep a secret ? yes, says I,
Why then says he ; Chubb, 'tis not right,
That we should lose so sweet a fight,
Chubb, since so good a man you're reckon'd,
I wish that you'd be Gudgeon's second,
If you just clap him on the shoulder,
And say you'll be his bottle-holder,
'Twill cheer his heart, and stir his blood,

And make him fight, and do him good ;
I long to see him doff his wig,
And clench his fists like Ben the Big ;
And if you'll make the champions strip,
And lend my drunken clerk your whip,
D-m-me, if he sha'nt round the ring go,
While I hold stakes, and guard the stingo.

Both.

This is our case, my Lord, we've done—
So Both'rum spoke, and Bore'um thus begun.



LECTURE X.

The Defendant's Case—Mr. Bore'um's Speech—Interrupted by Mr. Bother'um—His Law Argument—Cites Cases—Answered by Mr. Bore'um—Conclusion of Mr. Bore'um's Speech, and of the Arguments on both sides—End of the 10th Lecture of the 2d Book, and the last of the Pleader's Guide.

Bore.

So much for facts—the proud array
Of facts, display'd in proof this day—
I say, if ever there existed,
A cause wherein the facts were twisted,
Distorted, warp'd, I say distorted,
And every witness pack'd and sorted,
And tutor'd, Gentlemen, t' outface
The truth, and patch a rotten case
'Tis this—that skilful Fen-physician
So fully prov'd his erudition,
The dire effects of the disaster,
Th' elixir, and the patent plaster,
I thought my learned friend, for one,
Would try this *ichthupharmacon*;
I waited as his case was lame,
To hear how he'd apply the same,

And put in proof that famous drench,
Prescrib'd by learned Dr. Tench—
Tench, I must own, took blood enough,
And show'd his learning *quantum suff.* ;
But, as for that same Simon Trout,
At once so thirsty and devout,
There was some method and connection
In that same preacher's recollection ;
He ne'er with publicans had fed,
By inward light alone was led ;
He never from his school would venture,
Lest Satan at the door should enter,
Defeat at once the spiritual pastor,
And get the whip-hand of the master ;
Trout's story was a string of fictions,
Self-praises, and self-contradictions ;
But, not to waste your precious moments,
With idle and superfluous comments,
Chubb swore, on cross-examination,
Gudgeon gave Gull great provocation,
And both agreed to strip in buff,
And fight it out at fisti-cuff.
Now fighting's in itself an action
That gives both parties satisfaction,
A secret joy the bruiser knows
In giving and receiving blows ;
An inward transport, only tasted
By those who've thoroughly been basted ;
I'll prove it to my learned brother

These Gentlemen oblig'd each other,
 And each exerted his endeavors
 To prove no niggard of his favors ;
 For whose'er Gull's face peruses,
 Will fairly own, that nobler bruises,
 More scientific, more severe,
 No fighting baronet, or peer,
 Tho' pupils of th' illustrious Johnson,
 E'er laid his adversary's scone on.
 In war, as well as peace, we see
 A kind of reciprocity,
 A sort of mutual requiting,
 Which both the parties take delight in.
 If both are drubb'd, why both are quiet;
Volenti non injuria fit ;
 It is a *dammum*, as we say,
 A *dammum absq'. injuria*.
 Now, for a man, my Lord, to come,
 A vile election song to hum,
 And, for a man, my Lord, to go
 For to gesticulate; and so
 As I was saying, for to go — — —

Bother.

My Lord, I feel no small remorse
 In checking Mr. Bore'um's course,
 But as 'twill cut this matter short,
 And save your Lordship's time in court,
 Be it for argument admitted
 That both the combatants were pitted,
 Parker Chief Baron held, that bruising,

Deem'd so delightful and amusing,
 Was an illegal dang'rous science,
 And practis'd in the law's defiance,
 But, as my friend is in the dark
 It may be proper to remark,
 The case is *Boulter versus Clark*—
 The cases in the books are plenty—
 I'll just beg leave to quote you twenty,
 Some special verdicts, and demurrers
 From Durnford, Bosanquet, and Burrows ;
 Some late decisions of the courts,
 In point, my Lord, from Term Reports ;
 All books for solid information,
 Held in the highest estimation.
 But, stay, perhaps it may suffice, if
 I cite one case, and that's decisive—
 A case he little dreams upon,
 Mathew, my Lord, and Ollerton—
 Where one a beating underwent
 By his own licence and consent,
 I mean, My Lord, that famous beating,
 In Comberbach, 218, (two hundred eighteen)
 Court held, and 'twas understood,
 The licence void, the beating good—
 Associate, hand me the record—
 Well, Mr. Bore'um—?

Court.

(*Bore.*) Hem— my Lord ?

Court.

What say you to the cases quoted?—

Bore.

My Lord, these cases I have noted ;

Mere *nisi prius* cases, loose,
Loose law, my Lord, quite out of use—
My learned friend is fond of citing
Old cases, which he's seldom right in ?
Settling the law as some great men do,
On points reported arguendo,
That Case in Comberbach, my Lord,
Arose in debt upon award,
And such a case as that, no doubt,
Is what I little dream'd about—
What we rely on, is a saying
Of Dalton's touching cudgel-playing;
Two play at cudgels for the nonce,
For pastime, and a broken sconce :
A breaks B's head, B makes assault on
A's nose, "*No battery, quoth Dalton*"—
Now, if the law of bloody noses,
And broken heads, as he supposes,
And states in chapter twenty-second,
Good law at single-stick is reckon'd,
I see no reason for refusing
Same law to boxing and to bruising—
Besides, my Lord, our special plea
Is *son assault demesne*, d'ye see,
Chubb swore to threat'nings, provocations,
Loud oaths, and fierce gesticulations,
Such oaths—(these spectacles, gods rot'em,
Have gall'd my nose from top to bottom)
Such oaths—it shocks me to rehearse 'em,

(Why now they're tumbled down, gods
curse'em)

In short, what Chubb both heard and saw
Amounted to assault in law,
Gudgeon assaulted, and attach'd
My friend, in law, if not in fact,
And this is law his Lordship knows.
But now for instance, we'll suppose
The simple Case of *A* and *B*,
A is my finger, do ye see,
My adversary's button, *B* ;
Now, if my finger *A* I put on
My learned adversary's button,
It may be trespass, or a plea
Of *son assault demesne* for *B* ;
And if a little I should shake it,
And pull the button off, I take it
It would be batt'ry, and we say
That *B* was beat and bruis'd by *A* ;
That *A* said *B* did strike and wound,
And in the pleadings 'twould be found
A knock'd *B* down upon the ground.
And is not this a sound defence ?
Is it not law, and common sense ?
'Tis for you, Gentlemen, to say
Which of these two began the fray ;
But a more scandalous transaction,
Paltry, vexatious cause of action,
Or a more lame, more flat, more stale,

Dull and unprofitable tale,
 I never met in all my reading,
 In the whole course of law-proceeding,
 In study, practice, or in pleading,
 Than this same woful trumpt-up story,
 My learned brother has just laid before ye.—

And now, my Lord, I say no more,
 My Lord—than what I said before—
 But thus much I'll make bold to say,
 If all that I've advanc'd this day,
 Be not good law, my Lord, and sound
 As e'er was broach'd on legal ground,
 Soon as to chambers I return,
 All my black-letter'd books I'll burn. — —
 "Hold, hold," quoth Both'rum, 'twould be
 cruel

To turn your *fixtures* into fuel,
 Those precious tomes, with cobwebs spread,
 Which sleep so peaceful o'er your head!
 E'er yet that sentence is decreed 'em,
 Do read 'em, Mr. Bore'um, read 'em."—

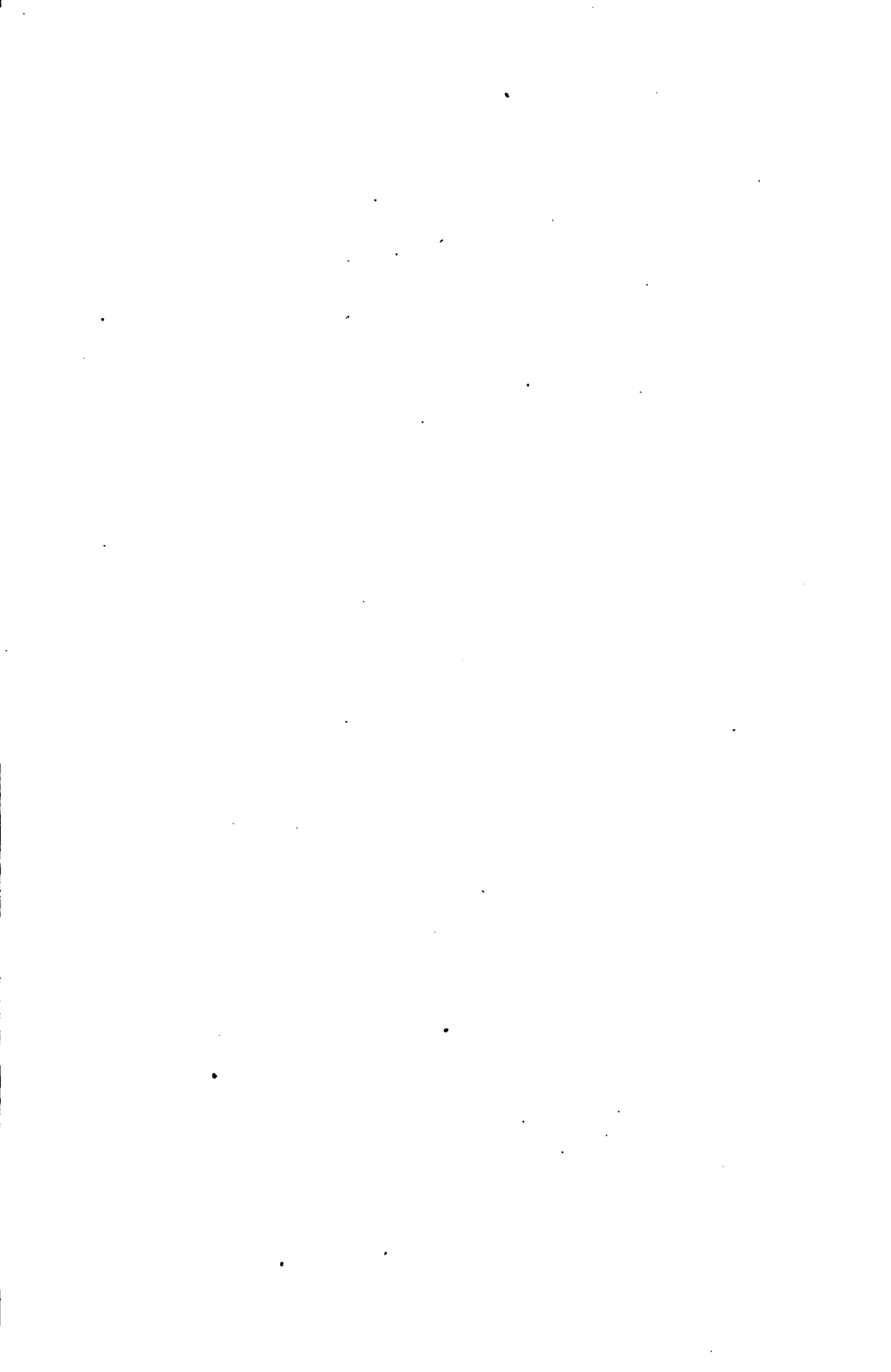
Thus they, as when attun'd to sprightly
 strain,
 Bass-verbs grumble, and bassoons complain,
 Or humble bees their drowzy notes prolong,
 With drones contending in alternate song,
 Incontinently held their vain contest
 In taunting mirth, and spleen-provoking jest;
 'Till tir'd at length, when each had rack'd
 his brain,

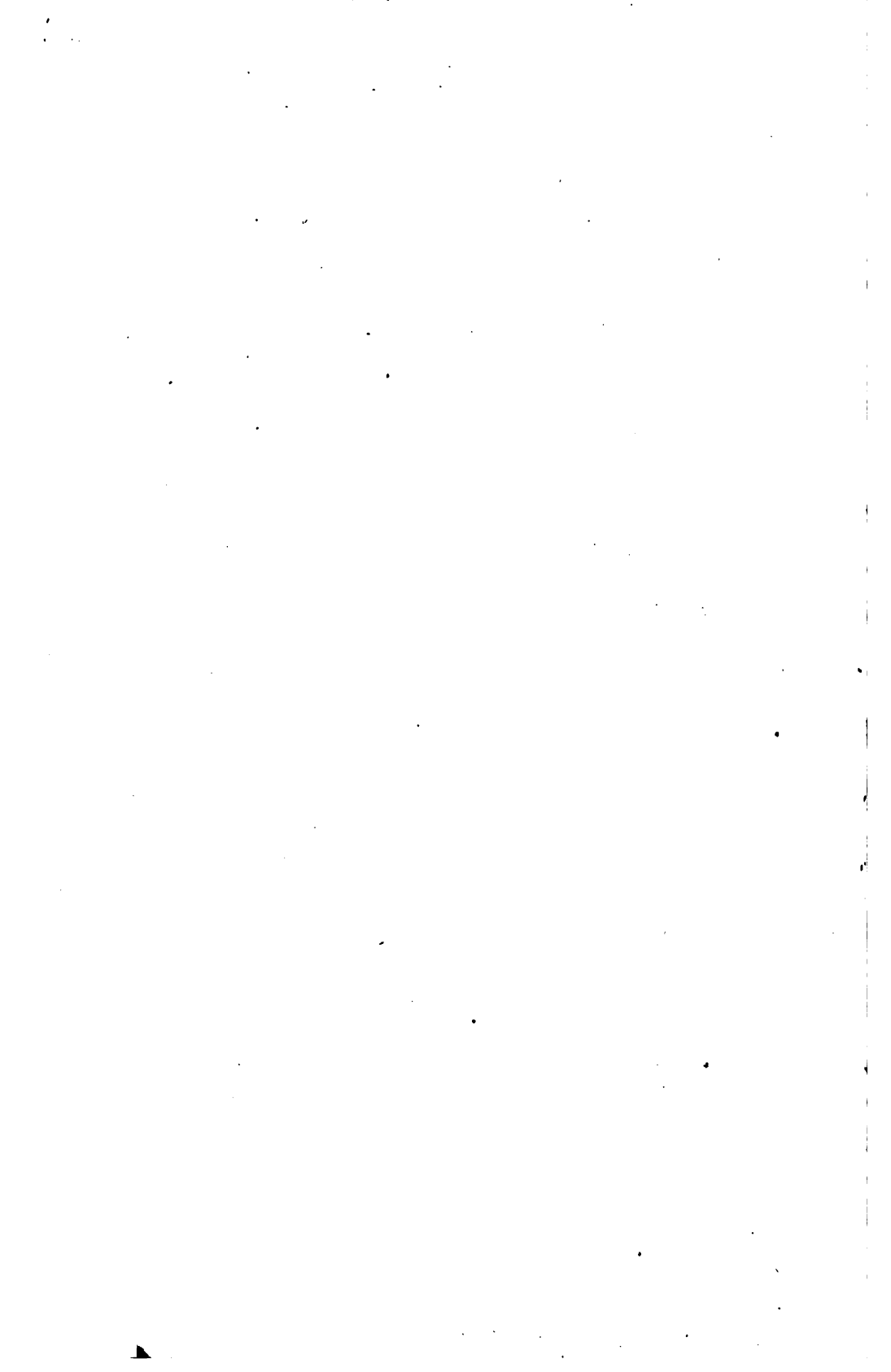
Oft rose and hem'd, and hem'd, and rose again,
As those fam'd heroes on the Phrygian shore,
Ajax, and bold Priamides of yore,
Turn'd peaceful friends, when they could
fight no more,
These gen'rous chiefs, resolv'd awhile to end
The doubtful conflict, and the suit suspend,
Both lovingly agreed at once to draw
A special case, and save the point in law,
That so the battle, neither lost nor won,
Continued, ended, and again begun
Might still survive, and other suits succeed,
For future heroes of the gown to lead,
And future bards in loftier verse to plead.

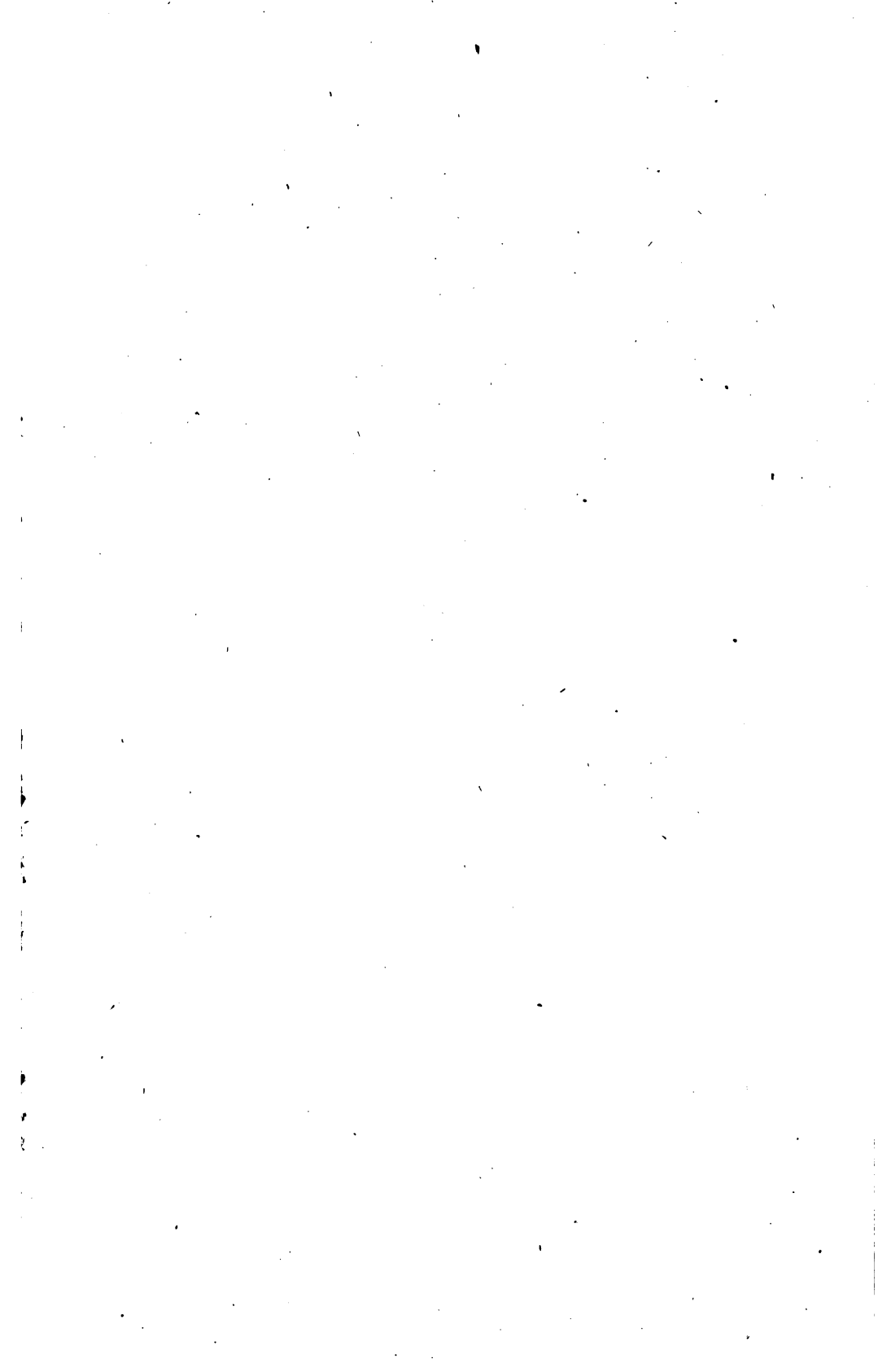


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